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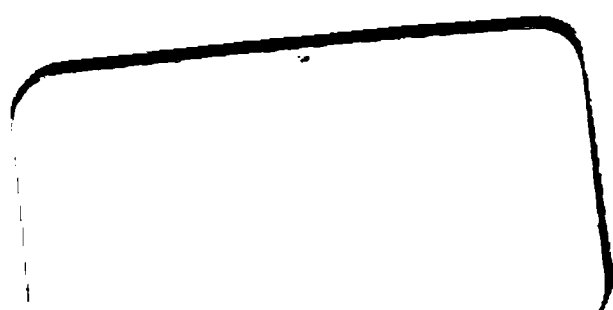
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KEY AND ELPHINSTONE'S
COMPENDIUM
OF
PRECEDENTS
IN
CONVEYANCING

FIFTH EDITION.

BY

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IN TWO VOLUMES.

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PREFACE.

THE profession has undergone a great loss by the death of the late Mr. Key, one of the authors of this book, who was a sound real property lawyer, an elegant draftsman, and an accomplished English scholar. Probably much of the popularity that this book enjoys arises from the happy diction that Mr. Key employed. The principal alterations in this edition are the following: the “heirs, executors and administrators,” both of the covenantor and the covenantee, have, as a general rule, been omitted; the covenants for payment in mortgages have been made covenants “to” pay, mortgages of land with chattels annexed and equitable mortgages have been redrawn, the forms in lunacy have been adapted to the present practice of the Office, a few additional precedents, chiefly conveyances to charities, have been added, and the notes have been thoroughly revised.

The Editor wishes to express his thanks to public officials and members of both branches of the profession for the loan of forms or for useful suggestions; to an anonymous correspondent, and to Mr. P. S. Gregory of the Equity Bar, for valuable comments on the last edition; to Mr. F. J. Lewis of the Equity Bar for constant advice and assistance given while this edition was passing through the press. Mr. Coltman desires to

thank Mr. A. T. Bonham Carter of the Inner Temple for assistance.

The Editor desires also to express the deep obligations that he is under to Mr. Arthur Dickson of the Equity Bar for the very careful manner in which he has performed the laborious tasks of preparing this book for the press, and of compiling the exhaustive indices.

The Editor will be grateful to any gentleman who will favour him with comments or suggestions that may be useful in a subsequent edition.

The reader is advised to have the Addenda noted in the proper places.

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ABBREVIATIONS.

*Abbreviations used in the Precedents and in the parts of text printed in italics
and in so much of the Notes printed in text type.*

according . . .	accdg	beneficial . . .	benefl
accordingly . . .	accdly	bequeathed . . .	bequed
account . . .	acct	bequest . . .	beqt
acknowledge . . .	acknowe	between . . .	betn
acknowledgment . . .	acknmt	building . . .	bldg
additional . . .	addl	calendar . . .	calr
administration . . .	admon	capital . . .	capl
administrators . . .	ads	certain . . .	certn
aforesaid . . .	afsd	certificate . . .	certfe
afterwards . . .	aftwds	charge . . .	chge
against . . .	agst	children . . .	chln
agreed . . .	agrd	circumstances . . .	circes
agreement . . .	agrmt	codicil . . .	codl
amount . . .	amt	commissioners . . .	commrs
and . . .	& (except AND, with capital A)	company . . .	Co
annual . . .	annl	comprised . . .	comprd
annuity . . .	anny	condition . . .	condon
another . . .	anor	consideration . . .	conson
appurtenances . . .	appurts	consolidated . . .	consold
arbitrator . . .	arbitror	contained . . .	contd
assign . . .	assn	containing . . .	contg
attain . . .	attn	conveyance . . .	convce
attorney . . .	atty	conveyancing . . .	convcg
bankrupt . . .	bkpt	Conveyancing Act . . .	C. A.
bankruptcy . . .	bkcy	co-partnership . . .	co-ptnp
before . . .	bfe	county . . .	coy
		court . . .	ct
		covenant . . .	covt

ABBREVIATIONS.

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creditor . . .	credor	herein . . .	hrin
daughter . . .	daur	hereinbefore . . .	hinbfe
debenture . . .	deb	hereof . . .	hrof
decease . . .	dece	hereto . . .	hto
declaration . . .	declon	hereunder . . .	hrunder
declared . . .	decld	hereunto . . .	hrunto
defendant . . .	deft	herewith . . .	hwith
described . . .	descd	husband . . .	husbd
difference . . .	diffce	immediately . . .	immedly
director . . .	diror	incorporated . . .	incorpd
discharge . . .	dischge	incumbrance . . .	incumbce
dividend . . .	divd	indenture . . .	indre
division . . .	divon	inheritance . . .	inhance
document . . .	doc	Institution . . .	Institon
dwelling . . .	dwg	insurance . . .	insce .
education . . .	educon	intended . . .	intd
either . . .	eir	interest . . .	intt
entered . . .	entd	joint . . .	jt
entitled . . .	entled	lawful . . .	lful
equal . . .	eql	letter . . .	lre
erections . . .	erons	limitation . . .	limon
estate . . .	este	limited . . .	limd
execute . . .	exte	machinery . . .	machy
execution . . .	exon	maintenance . . .	mtce
executors . . .	exs	manner . . .	mner
expense . . .	expse	marriage . . .	marre
expressed . . .	expd	matter . . .	mre
expressly . . .	exply	memorandum . . .	mem
following . . .	follg	mentioned . . .	mentd
funeral . . .	funl	messuage . . .	messe
general . . .	genl	mineral . . .	minl
grandchildren . . .	grandchn	money . . .	moy
grant . . .	grt	mortgage . . .	mtge
guardian . . .	gdian	mortgagee . . .	mtgee
heirs . . .	hrs	mortgagor . . .	mtgor
hereditaments . . .	hds	necessary . . .	necy
hereafter . . .	hrafter	neither . . .	neir
hereby . . .	hby	nevertheless . . .	nevs
hereinafter . . .	hinafter	notwithstanding . . .	notwg

number . . .	no.	reasonable . . .	reasble
numbered . . .	nod.	receipt . . .	rect
occasioned . . .	occasd	receive . . .	rece
original . . .	origl	redemption . . .	redmon
otherwise . . .	orwise	referred . . .	refd
paid . . .	pd	release . . .	rele
parcel . . .	pcel	remainder . . .	remr
part . . .	pt	representative . . .	repve
particular . . .	parlar	request . . .	reqt
parties . . .	pties	requisition . . .	requon
partner . . .	ptner	residuary . . .	residy
partnership . . .	ptnp	respect . . .	respt
party, ies . . .	pty, ies	respective . . .	respive
per annum . . .	p.a.	respectively . . .	respily
per cent. . .	p.c.	reversion . . .	revon
perform . . .	pform	reversionary . . .	revy
person . . .	pson	right . . .	rt
piece . . .	pce	said . . .	sd
plaintiff . . .	plt	schedule . . .	schdle
policy . . .	poly	security . . .	secy
policies . . .	pols	secured . . .	secd
possessed . . .	possed	separate . . .	septe
possession . . .	posson	Settled Land Act . . .	S. L. A.
premises . . .	premes	several . . .	sevl
presents . . .	psnts	shall . . .	shl
previous . . .	prevs	should . . .	shd
principal . . .	ppal	singular . . .	singr
proceedings . . .	pcdgs	society . . .	socy
proper . . .	pper	solicitor . . .	solor
property . . .	ppty	stock . . .	stk
provided . . .	provd	subject . . .	subjt
provision . . .	provon	subsequent . . .	subseqt
proviso . . .	provo	succession . . .	succon
purchase . . .	pchase	successor . . .	succor
purpose . . .	ppose	sufficient . . .	sufft
pursuance . . .	psuance	survivor . . .	survor
pursuant . . .	psuant	testamentary . . .	testy
quarter . . .	qtr	testator . . .	testor
railway . . .	rly	thereabouts . . .	thrabts

thereafter	.	.	thrafter
thereby	.	.	thby
therefrom	.	.	thfrom
therein	.	.	thrin
thereinafter	.	.	thinafter
thereinbefore	.	.	thinbfe
thereof	.	.	thof
thereon	.	.	thron
thereto	.	.	thto
thereupon	.	.	thrupon
together	.	.	togr
trustee	.	.	tree
whatsoever	.	.	whatsr
whereas	.	.	whas
whereby	.	.	whby
wherein	.	.	whrin
whereof	.	.	whof
wheresoever	.	.	wheresr
which	.	.	wch
without	.	.	witht
witness	.	.	wits
witnesseth	.	.	witneth
would	.	.	wd
year	.	.	yr
younger	.	.	yor

at end of word	-ance	}	.	-ce
	-ence		.	-mt
	-ment		.	-mt
	-ation	}	in words of more than two syllables	-on
	-etion			
	-ition			
	-ution			
	-action			
	-ection			
	-iction			
	-uction			
	-hold	.	.	-hd

-ing . at end of word of
more than one
syllable where fol-
lowing a conso-
nant . -g

It will of course be understood
that the abbreviation of a word is
to be used in the plural of the
word, and also in words derived
from it, unless otherwise stated :—
Thus

appoint	.	.	appt
appoints	.	.	appts
appointor	.	.	apptor

ADDENDA ET CORRIGENDA

TO VOLUME I.



- Page 32 Note, line 7. *After "ubi sup." add "Dubowski v. Goldstein, [1896] 1 Q. B. 478."*
- „ 55 Note, last line. *Add "but not against a tenant for years: Re Herbage Rents Charity, [1896] 2 Ch. 811."*
- „ 73 Note (c), line 8. *For "c. 21" read "c. 51."*
- „ 73 Note (c), line 13. *For "c. 81" read "c. 8."*
- „ 75 Note (d). *Add* It has been argued that estate duty is payable on the death of a tenant for life who has surrendered his life interest on the grounds, *First*, that the property surrendered is 'property in which the deceased had an interest, ceasing on the death of the deceased' (see Finance Act, 1894, s. 2 (1) (b)); and *second*, that as 'the existing law and practice relating to any of the duties now leviable on or with reference to death, shall, subject to the provisions of this Act, and so far as the same are applicable, apply for the purposes of collection recovery . . . of estate duty . . . as if such law and practice were in terms made applicable to this part of the Act' (see s. 8 (1)), and as succession duty would be payable on death of the tenant for life, notwithstanding the surrender of his life interest, so must estate duty.
- As to the first of these arguments it may be observed that the word 'had' in the subsection must refer to some particular time, and that as the only time referred to in the section is that of death, 'had' must refer to that time. In order to make 'had' apply to property disposed of by the deceased in his lifetime in cases not falling under sub-s. (c), the words 'at any time' would have to be interpolated after 'had.' So that, according to the ordinary rules of construction, duty is not leviable under this sub-section.
- As to the second of these arguments, it will be observed that s. 8 (1) relates to the collection and recovery of duties, and does not impose any duty.
- „ 99 An appointment of new trustees under a power vested in a lunatic will be found at Vol. II., p. 869.
- „ 103 Line 20 from end. *For "1890" read "1893."*
- „ 189 See as to the execution of powers of attorney to transfer land in British India, 40 Sol. J. 456.
- „ 200 Precedent XII. For a power of attorney to manage the property of a lunatic abroad, see Vol. II., p. 875.

- Page 232 Note, line 5 from end. *For* "54 & 54 Vict." *read* "54 & 55 Vict."
- " 234 Note (d), line 4 from bottom. *For* "Romash" *read* "Bomash."
- " 237 Form 11. *Add* after "1888" the words, "or order of Court."
The provisions of s. 117 of the Stamp Act, 1891, appear not to extend to orders of Court.
- " 243 Line 2 of note (g). *For* "236" *read* "226."
- " 262 Line 5 of note. *For* "Conv. Act, s. 7" *read* "Conv. Act, 1881, s. 7."
- " 282 Note (a). *For* "Austen" *read* "Austin."
- " 285 Note. *Add* The vendor cannot require the conveyance to be made subject to restrictive covenants not noticed in the particulars or conditions. *Hardman v. Child*, 28 Ch. D. 712.
- " 379 Note (c), last line. *Add* "reversed, [1896] 2 Ch. 1."
- " 406 Text, line 6 from bottom. "Covenantors" should be in italics.
- " 419 Text, line 5 from bottom. *Delete* "for himself & his assns."
- " 419 *Delete* note (g). *Substitute*, "It is useless for the purchaser to covenant for himself and his assigns, for at law the burden of a covenant cannot, except in as between landlord and tenant, run with the land, and as the covenant in the text is a positive covenant, it cannot be enforced in equity. See *ante*, p. 285, note. But on the lessor recovering damages against the lessee for breaches of covenant occurring while an assign, whether the original assign, or an assign of his, is in possession, the lessee is entitled to be indemnified by the assign independently of the covenant. *Moule v. Garrett*, L. R. 5 Ex. 132; 7 Ex. 101."
- " 430 Line 9 from bottom of note. The Finance Act referred to is the Act of 1894.
- " 450 Note, line 16. *Add* "As to a sale to one of several mortgagors, see *Kennedy v. De Trafford*, [1896] 1 Ch. 762."
- " 458 Line 12. *For* "Frewe" *read* "Freme."
- " 462 Line 14 from bottom of note. The Finance Act referred to is the Act of 1894.
- " 466 Line 22. *After* "so found" *add* "*Re Baggs*, [1894] 2 Ch. 416."
- " 476 Note (b), line 13. *For* "Munday" *read* "Mundy."
- " 481 Note (c), line 6. *For* "[1896] 1 Ch." *read* "[1896] A. C."
- " 491 Note, line 24. "*Re Harkness & Allsopp*, now reported, [1896] 2 Ch. 358, decides that an acknowledged deed is necessary to pass freeholds vested on a married woman as trustee."
- " 536 3 lines from bottom of text. *For* "a direction signed by the Chief Clerk, &c." *read* "an order"; and in last line of text, *for* "directed" *read* "ordered."
- " 536 *Insert* at beginning of note (a), "As to payment into Court, see."
- " 553 Reference should be made to the Light Railways Act, 1896 (59 & 60 Vict. c. 48); see s. 13 as to the method of determining the purchase money and compensation for the land; s. 14, authorizing payment to trustees of purchase money or compensation not exceeding £500, and s. 19, enabling conveyances to be made with the sanction of the Board of Agriculture for the purposes of the railway gratuitously or at an undervalue.
- " 565 *Add* to note on Charitable Conveyancing a reference to Vol. II. p. 610, note, as to statutory powers for making conveyances of land for charitable purposes.
- " 573 Line 3 of clause 8. *Delete* "professing."

- Page 584 Note. Redemption can now be made, under the Finance Act, 1896, (59 & 60 Vict. c. 28), s. 32.
- „ 627 Note (b). *Add* “An order made under the Trustee Act, 1893, vesting or appointing a person to convey the estate of an infant tenant in tail in possession bars the estate tail and the remainders over. *Re Montagu*, [1896] 1 Ch. 549.”
- „ 655 Note. *Add* “a reference to the Judicial Trustee Act, 1896 (59 & 60 Vict. c. 35), s. 3.”
- „ 664 Note, last line. *Add* “*Re Pollard's Settlement*, [1896] 1 Ch. 901 ; 2 Ch. 552.”
- „ 708 If the house is likely to be sublet to weekly tenants the following clause may be added. “The landlord or any person authorised in writing by him may, if and when he thinks fit, as agent for and in the name of the tenant, collect and give receipts for any rent payable to the tenant, by any under tenant or lodger, with power for the landlord to pay himself whatever is due to him out of any rent so collected.”
- „ 719 Note (a). *For* “58 & 54 Vict.” *read* “53 & 54 Vict.”
- „ 724 As to the liability for damages for breach of covenant to repair contained in an underlease where the headlease contains a similar covenant, see *Conquest v. Ebbetts*, [1896] A. C. 490.
- „ 761 Note (g), line 2. *For* “23 & — Vict.” *read* “23 & 24 Vict.”
- „ 794 Line 2 of note (a). *After* “38,” *add* “and the Coal Mines Regulation Act, 1896 (59 & 60 Vict. c. 43), s. 4.”
- „ 814 Note (b). 50 & 51 Vict. c. 58, s. 38 is amended by 59 & 60 Vict. c. 43, s. 4.
- „ 860 Line 4 of note. *For* “13 Vict.” *read* “13 & 14 Vict.”

ADDITIONAL ADDENDA TO VOLUME I.

Page 75 Note (d). It may, possibly with success, be argued that, as in construing an Act relating to revenue the technicalities of English law must be disregarded, where a life interest is released to the remainderman the property passing by the gift falls under the second branch of s. 38 (2) (a) of the Customs and Inland Revenue Act, 1881, as being "a voluntary disposition operating as an immediate gift *inter vivos* by way of transfer." If this argument be correct, and if the tenant for life dies within the year, the only property which would formerly have been liable to Account duty, and which therefore will now be liable to Estate duty, is the income accruing during the lifetime of the tenant for life, after the release of his life interest.

AGREEMENTS (a).

I.

AGREEMENT *with a BUILDER or CONTRACTOR for building a HOUSE or executing other WORKS. With variations.*

AGRMT [*or, Articles, or Mem, of agrmt*] made the Parties.
— day of — betn A. of, &c. (hinafter called the contractor) of the one pt, & B. of, &c. (hinafter called the owner) of the other pt. [WHY IT IS AGRD as follows]: (b)

(a) For agreements for sale and enfranchisement, see **CONTRACTS FOR SALE**; for agreements for Arbitration, Exchange, Lease, Mortgage, Partition, Partnership, and Separation, see those respective headings; for agreements as to patents, see **PATENTS**; see also **MISCELLANEOUS PRECEDENTS**. As to the Stamps on Agreements, see the Stamp Act, 1891, 54 & 55 Vict. c. 39, ss. 22 and 23, and the Schedule, heads **AGREEMENT, GENERAL EXEMPTIONS FROM ALL STAMP DUTIES**; and as to Agreements under Seal, the heads **BOND and COVENANT**.

(b) The following are various forms for commencing the operative part of an agreement, though in ordinary cases it is not necessary to insert any formal commencement where there are no recitals:—

1. "It is hby [mutually] agrd [by & betn the sd pties hto] as follows:"—2. Where there are several parties, and each is to be expressed to be bound to the performance of his own acts only, "each & every of them, the sd A., B., C., & D., [*or, the sd respive pties hrto*] so far as relates to his own acts & defaults only [*or, so far as the agrmts hinafter contd are or ought to be pformed by him, his hrs, exs, ads, or assns, but not further or orwise*] doth hby [in conson of the agrmts hinafter contd on the pt of the others or other of them] agree with the others or other of them as follows:"—3. Where there are several parties of the one part who are to be jointly and severally bound and entitled to the benefits of the agreement, and one party of the other part, "the sd A., B., & C., do hby jtly & sevlly agree with the sd D., and the sd D. doth hby

Forms of
commence-
ment of
agree-
ments.

Short form.

Fuller
form.

Where
several
parties are
bound
jointly and
severally.

Agreement
to execute
works.

1. THE contractor sh^l at his own cost [take down & remove the house & bldgs, situate & being No. —, in

In case of
a firm.

agree with the sd A., B., & C., jtly & sevly (so far as the agrmts hinafter contd are or ought to be pformed by the sd pties resply or their respive hrs, exs, ads, or assns) as follows: "

—4. Where one of the parties is a firm, " the sd A. (so far, &c.) doth hby agree with the sd B. & Co. & with the sevl ptners in their firm jtly & sevly, and the sd B. & Co. (so far, &c.) do hby for themselves & the sevl ptners in their firm jtly & sevly agree with the sd A. as follows: " Under an agreement in either of the two last forms, all or any of the parties jointly or severally liable could be sued in the same action: see R. S. C., 1883, Order XVI. rr. 4 and 6.—5. Where a married woman is a contracting party, it is unnecessary, having regard to the Married Women's Property Act, 1893 (56 & 57 Vict. c. 63), s. 1, that the intention to bind her separate estate should be expressed.

In case of
a married
woman.

Frame of
covenants
under seal.

In the case of agreements under seal, it is sufficient (or to speak more correctly, customary, there being of course no magic in the word) to substitute the word "covenant" for "agree." See also the forms under "COVENANT." It is now wholly unnecessary that the covenant should be expressed to bind the "hrs, exs, & ads," of the covenantor according to the form formerly in use in the case of instruments under seal (though it was practically of little use even as regards the word "hrs"); see the C. A., 1881, 44 & 45 Vict. c. 41, s. 59; Elph. Introd. 114; and the words in question are omitted in the commencement of covenants or other obligations in this work. But it must be remembered that the Act does not obviate the necessity of expressly binding the "assns" of the covenantor where this was necessary before the Act, in order to make the burden of the covenant run with the land (where the law so permits), and in such cases some practitioners insert all the words "hrs, exs, ads, & assns."

Devolution
of benefit
of contract.

The benefit also of a contract, whether under seal or not, will (unless such construction is excluded by the terms or nature of the contract) devolve, in the case of leaseholds (including estates *pur autre vie* devolving on the personal representatives) and personalty, on the personal representatives, or in the case of real estates of inheritance, or *pur autre vie* devolving on the heir, on the heirs, as well as the assigns of the parties, without any express mention of their "hrs, exs, ads, & assns" (see as to covenants relating to land, the C. A., 1881, s. 58); and the benefit of a contract with several persons jointly will devolve on the survivors, &c., see the same Act, s. 60.

As to
annexing
agreement
to prior
agreement.

Where an agreement varies the terms of, or is otherwise connected with, a previous instrument or several instruments, it may be convenient in order to avoid reciting the prior instrument or instruments to describe the later one as supplemental, or intended to be read as annexed thereto (in lieu of being endorsed). The provision in the C. A., 1881, s. 53, as to this applies only to deeds, but this expedient can of course be had recourse to in all cases independently of that enactment, as it needs no statutory authority.

— street, &c., &] erect, build, & completely finish in a good, substantial, & workmanlike manner [& with the best materials of their several kinds (c)], a house & other buildings upon a piece of ground belonging to the owner, situate &c., & containing &c., or, “upon the site of the said existing house & buildings” according to the plans, elevations, & sections, & in accordance with the specification of works & drawings which have been respectively signed by the contractor & by C. the surveyor of the owner, or, “shall, at his own cost, execute & completely finish &c., the several works mentioned in the specification herunto annexed, according to the plans &c.,” & the contractor hereby admits that the said specification, plans, & drawings are sufficient for their intended purpose, & that the works can be successfully executed in accordance therewith, without any additional or extra work other than such work as is necessarily implied therein, or to be inferred therefrom upon a fair & liberal construction.

2. THE said works shall be executed under the direction & to the satisfaction in all respects of the said C. or other the surveyor for the time being of the owner (d), who shall have been appointed to act for him for the purpose of this contract by some writing under his hand delivered to the contractor at his place of business (hereinafter referred to as the surveyor).

Works to be executed to satisfaction of surveyor.

3. On the signing of this contract complete & full possession of the said premises, so far as may be necessary for the execution of the said works, but not so as to constitute a tenancy, shall be given to the contractor, who shall forthwith commence the said works & actively prosecute the same, & the said works shall in all respects be completed [& the said house & buildings made fit for habitation & use] within ——— calendar months from the time when such possession shall be given: PROVIDED that in case any delay shall arise from fire, tempest, frost, or other inevitable cause, or accident, or from any strike (e) or lock-out in the building trade, or by the default of the owner in paying in due course any moneys due &

Completion.

Delay.

See the note, *infra*, under the head “DEEDS” as to making instruments supplemental to prior instruments.

(c) Where the materials are to be supplied by the owner, substitute: “but with materials to be supplied by the owner as hereinafter mentioned;” and add the provisions in notes (a), (b), (d), pp. 4 and 5.

(d) See *Eckersley v. Mersey Docks, &c.*, [1894] 2 Q. B. 667.

(e) As to the meaning of the word “strike,” see *Stephens v. Harris*, 56 L. J. Q. B. D. 516.

payable to the contractor under this contract (a), then such further time shl be allowed for the complon thof, as the surveyor shl in writg certify to be reasble.

Materials
provided
by con-
tractor.

4. ALL materials to be used in the works, although the same may not be parly mentd in the specificon (save as orwise provd by the sd specificon, & save as may be hrafter orwise required by the owner or the surveyor, by any writg under his hand), shl be supplied & furnished by the contractor (b).

Clearance
of scaffold-
ing &c.

5. THE contractor shl, on the complon of the sd works, at his own expse, remove & clear away all scaffoldg, fencg, unused materials, & rubbish from the same, & leave the whole of the works & premes in a clean & pper state.

Payment
(c).

6. THE owner shl pay to the contractor the sum of £——,

(a) "Or in supplying the materials for the sd works after notice in that behalf shl have been given by the contractor as hinafter mentd."

Materials
provided
by owner.

(b) In the case mentioned in note (c), p. 3, substitute for the provision in the text the following: "ALL the old materials of the existg bldgs wch shl not be fit to be used in or about the sd works shl forthwith be removed by the contractor at his expse, & shl when so removed become his ppty, & all new materials to be used in or about the sd works shl be provd by the owner, & shl from time to time be delivered by him at his own expse at the place where the sd works are to be exted, as the sd materials shl be required by the contractor, reasble notice in that behalf being given by him to the owner: But all scaffoldg, tackle, tools, machy, plant, & other things requisite or pper for the sd works, except the materials used thrin, shl be provd by & at the expse of the contractor: THE sd works shl be exted with the sd old materials so far as the same shl be fit for the ppose, & with the new materials to be supplied as afsd by the owner to the contractor, who shl be acctable for the same, & shl be chged for all materials wch shl be certified by the surveyor to be fit for use, but not to have been used in or about the sd works, a reasble allowce being made for waste, & the amt so to be chged shall also be fixed by the surveyor, & shl be pd by the contractor to the owner."

(c) As to the liability of the builder to pay the charges of the quantity surveyor, see *North v. Bassett*, [1892] 1 Q. B. 333.

wch shl include the cost of labour, & of all materials (d), plant, & other things required for the pposes of the works, & of the convce or transport & removal thof to or from the works, in mner followg, that is to say, the sum of £——, upon the prodon to the owner of the certfe of the surveyor that work to the value of £—— has been duly exted to his satisfon by the contractor, the further sum of £—— upon the prodon of the like certfe that work to the value of £—— has been so exted, (e) & the remr of the sd sum of £—— upon the prodon to the owner of the certfe of the surveyor that the sd works have been in all respts completed [& the sd house & bldgs made fit for habitation & use] in accordce with this contract, & to his satisfon, [or, “in sums amtg to £90 p.c. on the value of the works as the same shl proceed, & not being less than £—— at each paymt, wch percentage shl be ascertained by the sd surveyor, & shl be pd upon his certfe of the same being produced to the owner, & the remr of the sd sum of £——, &c., as bfe;” or, “THE sum to be pd by the owner to the contractor for the sd works shl be ascertained accdg to the rates specified in the schdle of prices annexed to the sd specificon, so far as the prices are there specified, wch prices shl include the cost of labour &c., as above (save as orwise provd by the sd specificon or schdle of prices), & the paymt for any work not included in the sd schdle of prices shl be fixed by the surveyor: WEEKLY paymts on acct shl be made by the owner to the contractor upon the certfes of the surveyor of the contract value of the work exted, subjt to a dedon of 10 p.c. upon such value, wch shl be retained by the owner until the complon of the work, & shl be pd to the con-

Alternative provisions.

(d) “Except such as are hby agrd to be supplied by the owner.”

(e) Occasionally the payment of the last instalment is delayed for a year, so as to allow of defects being discovered: in this case say, “And the remr of the sd sum of £—— one yr after the prodon to the owner of the certfe,” &c., as in text. “In case the surveyor shl within the sd yr certify that any work [or materials] are defective, the same shl forthwith be made good by the contractor at his own expse, or on his default by the owner at the expse of the contractor.”

Where payment of last instalment is to be delayed.

tractor upon the certfe of the surveyor of the works havg been completed, & of the balce remaing due to the contractor.”]

With-
holding
certificate
(a).

7. THE surveyor shl not give his certfe in respt of any work wch is in any respt defective or not accdg to contract or orwise not done to his reasble satisfon, or while the contractor is not usg due diligce in the prosecon of the works or orwise makg default in the pformce of this contract.

Deviations
and extra
work (b).

8. THE owner [or the surveyor] may at any time durg the progress of the works by order in writg under his hand, make or cause to be made any alterons in the sd origl specificon & plans by way of addon or omission, or orwise deviatg thfrom; & the sd works shl be exted accdg to the sd alterons or devions under the diren & to the satisfon of the surveyor in the same mner as if the same had been included in the sd origl specificon & plans; & any work or materials wch shl so be ordered not to be done or used shl be omitted or shall not be used by the contractor.

Payment
for devia-
tions and
extra
work (c).

9. ALL addons and dedons to be made to or from the amt of the contract price in respt of any such alteron or devion from the sd specificon or plans as afsd shl be [ascertained accdg to the rates specified in the schdle of prices annexed to the sd specificon, & in case the rates are not thrin specified, shl be] fixed by the surveyor. And the diffce of expse occasioned by any such alteron or devion shl be added or deducted (as the case may be), to or from the contract price. But no paymt or allowce whatever shl be made to the contractor for any extra work or materials done or used by him witht a previous order or authority in writg from the owner (d); & any alteron or devion ordered or authorised as afsd shl not in anywise alter the total contract price to be pd to the contractor, except so far as the same shl alter the amt of labour or the value of the materials wch may be required to be used in or about the works, nor shl alter the mode in wch the con-

(a) As to the power of the Court on the bankruptcy of the contractor to order a certificate to be given, see *Exp. Gray*, 58 L. J. Q. B. D. 5.

(b) As to this clause, see *Rex v. Peto*, 1 Y. & J. 37.

(c) As to this clause see *Tharsis Sulphur & Copper Company v. McElroy*, 3 App. Ca. 1040; *Richards v. May*, 10 Q. B. D. 400.

(d) The words “or the surveyor” are sometimes inserted here, but they are somewhat dangerous, as they enable the surveyor to increase the cost of the works without the sanction of the owner.

tract price is to be pd, or in wch the value of the work done is to be ascertained with a view to the paymt thof. And the contractor shl not by reason of any such addon to or alteron in the works as afsd be allowed any further time for completg the same, except such further time, if any, as the surveyor shl in writg certify to be reasble.

10. THE owner shl be entled to deduct any moys wch the contractor shl be liable to pay to the owner, under this contract or orwise, from any sum wch may become payable to the contractor hrunder: And the surveyor in makg his certfes as afsd shl have regard to any sums so chgeable agst the contractor: Provd always, that this provon shl not affect any other remedy by action at law, or orwise, to wch the owner may be entled for the recovery of any such moys.

Power to deduct money owing by contractor (e).

11. In case the sd works shl not in all respts be completed [& the sd house & bldgs made fit for habiton & use] on or bfe the sd — day of —, or within such extended time as shl be allowed for that ppose, as hinfte mentd, & the surveyor shl certify in writg the fact of such non-complon, then the contractor shl pay to the owner, as liquidated & ascertained damages for such default, & not as a penalty, the sum of £—— for every subseqt week, & so in proportion for any pt of a week, until the complon of the sd works, such complon to be certified in writg by the surveyor.

Penalties for delay (f).

12. ALL materials wch may from time to time durg the progress of the works be in, upon, or about the premes for use in the sd works, shl be deemed to be the absolute ppty of the

Materials, &c., to be property of employer (g).

(e) As to the right of set-off in the absence of express contract, see *Young v. Kitchen*, 3 Ex. D. 127.

(f) That this provision is effectual, see *Law v. Local Board of Redditch*, [1892] 1 Q. B. 127.

(g) Although a provision for forfeiture of the building materials to the owner on the bankruptcy of the contractor would be void as a violation of the policy of the bankruptcy law within the principle of *Higinbotham v. Holme* (19 Ves. 88), that a man cannot validly contract that his property shall go over on his bankruptcy so as to be taken away from his creditors (*Exp. Jay*, 14 Ch. D. 19; *Exp. Barter*, 26 Ch. D. 510), the clause in the text, having no reference to bankruptcy, is free from this objection (*Brown v. Bateman*, L. R. 2 C. P. 272; *Exp. Dickin*, 4 Ch. D. 524); and is not touched by the Bills of Sale Acts (*Reeves v. Barlow*, 11 Q. B. D. 610; 12 Q. B. D. 436; see 36 S. J. 751); and is preferable to a mere licence to seize the materials on the default of the builder, although this would prevail against

As to bankruptcy or default of contractor.

Damage to
works.

owner; but the contractor sh^l nev^s be solely responsible for the loss or destron thof, & for all damage wch may happen thto by fire, tempest, or any other cause whatsr, & the contractor sh^l likewise be liable to make good all damage wch may happen to the sd works from any cause whatever durg the progress thof.

Contract
not to be
assigned
(a).

13. THE contractor sh^l psonally superintend the exon of the works, & sh^l not assn [or sublet] this contract, or any pt thof, witht the express licence & approval in writg of the owner.

Power in
case of de-
lay or bad
work to
take works
out of con-
tractor's
hands.

14. IN case at any time durg the progress of the works any unnecy delay sh^l occur in the carryg on of the same through the default of the contractor [& such delay sh^l be certified in writg by the surveyor], & the owner, or the surveyor, sh^l give a written notice to the contractor to proceed with the sd works, or leave the same at his then or last known place of abode or business, & the contractor sh^l not proceed with the sd works to the satisfon of the surveyor within ——— days after such notice sh^l have been so given, or left, or in case the contractor sh^l at any time neglect or omit to pull down or remove any work or materials wch the surveyor sh^l have certified in writg to be defective, or not accdg to contract, within ——— days after written notice so to do sh^l have been

the trustee in bankruptcy, and would not be within the Bills of Sale Acts (*Exp. Newitt*, 16 Ch. D. 522). The clause is sometimes extended to the contractor's plant, but this being contrary to the intention of the contract is wrong; and clause 14 should be relied on as to this.

As to as-
signment
by con-
tractor.

(a) This would not of course interfere with an assignment by the contractor of moneys to become due to him under the contract, subject to the owner's rights under clauses 10 and 14. As to the effect of an assignment by way of mortgage or otherwise of such moneys (whether actually earned or not), as between the particular assignee and the trustee under a subsequent bankruptcy or liquidation of the contractor, see *Tooth v. Hallett*, 4 Ch. 242 (where the claim of the trustee was preferred; but the case turned or is distinguishable on the ground that, the contractor being in default, the buildings were completed by the trustee with his own moneys, so that the case was the same as if the work had been taken out of the contractor's hands under the forfeiture clause); *Exp. Nichols*, 22 Ch. D. 782, distinguished in *Exp. Moss*, 14 Q. B. D. 310; *Drew v. Josolyne*, 18 Q. B. D. 590. As to the effect of such an assignment upon subsequent dealings between the owner and the contractor, see *Brice v. Bannister*, 3 Q. B. D. 569. The contract of a builder is not a personal contract, and, therefore, on his death his personal representatives may carry it out. (*Marshall v. Broadhurst*, 1 Cr. & J. 403.)

Death of
contractor.

given to him or left on the works by the owner or the surveyor, or left as aforesaid, or within such further time as may be specified in such notice, or in case the contractor shall assign [or sublet] this contract or any part thereof without licence (b): THEN & in any such case the owner shall be at liberty, without avoiding this contract, to take the said works wholly or partially out of the hands of the contractor, & to employ any other person or persons to execute the same, & for that purpose to take possession of, & use all materials, scaffolding, plant, tools, implements, & things on or about the said works; & all expenses & damages thereby incurred shall be ascertained & certified by the surveyor, & shall be paid by the contractor to the owner.

15. THE certificate, or decision in writing of the surveyor upon any matter as to which he is hereby required or authorised to certify or decide, shall be final & binding upon both parties, except that the surveyor may by any certificate make any correction or modification in any previous certificate which shall have been made by himself, or by any predecessor in his office.

Certificates of surveyor.

16. THE contractor shall conform in all respects to the provisions & regulations of any general or local Act of Parliament, or of any local authority which may be applicable to the said works, & indemnify the owner against all penalties incurred by reason of the non-observance of any such provisions or regulations.

Conformity to building Acts.

[17. THE owner shall indemnify the contractor against all actions & proceedings on the part of any person having or claiming ancient lights on account of any actual or alleged or apprehended interference of the said buildings & works therewith.]

Interference with lights.

[18. *Arbitration Clause. See ARBITRATION.*]

Arbitration (c).

IN WITNESS whereof the said parties have hereunto set their respective

(b) It has been usual to extend this clause to the case of the contractor becoming bankrupt, &c., but such a provision has been decided to be void as operating to deprive the trustee in bankruptcy of rights which he would otherwise have had in respect of the bankrupt's property, and being therefore opposed to the policy of the bankrupt law according to the principle noticed above, p. 7, note (*Exp. Barter*, 26 Ch. D. 510), and is therefore here omitted. As to the right of the trustee in bankruptcy to disclaim onerous contracts, see the Bankruptcy Act, 1883, s. 55.

As to bankruptcy.

(c) The expediency of inserting an arbitration clause may be doubtful, unless it be a clause making the decision of the architect or surveyor conclusive. For a very stringent clause of this nature which was upheld, see *Tullis v. Jackson*, [1892] 3 Ch. 441.

hands the day & yr first above written *or*, "As wits the hands of the sd pties."

Signed by the above-named —, }
in the presce of, *or*, "Wits to the }
signature of the above-named —."

II.

AGREEMENT *with a BUILDER or CONTRACTOR.* *Short Form (a).*

PARTIES, as in the last Precedent.

Agreement
to execute
works.

1. THE contractor shl forthwith commce & bfe the expiron of — weeks from this date in all respts complete with the best materials in the best workmanlike mner & to the satisfon of the owner all the works & things mentd or refd to in the parlars or specificon hrunto annexed in & upon the house & premes thrin mentd.

To remove
plant on
completion.

2. THE contractor shl within one week from the complon of the sd works & things remove all his scaffoldg, plant, & materials from the premes.

Payment.

3. THE owner shl pay to the contractor the sum of £—— for the sd works & things.

Penalties
for delay.

4. If from any cause whatever the sd works & things shl not be completely finished, & the sd scaffoldg, plant, & materials removed within the time & in mner afsd, then the owner may deduct from any moys then or thrafter due or payable to the contractor the sum of £—— per day for every day after the expiron of — weeks from this date until such complon & removal shl be effected, as & for liquidated damages.

Payment of
penalties.

5. IN case there shl not be sufft moy due to the contractor to make such dedon, then the excess shl be pd by the contractor to the owner.

On default
of contrac-
tor owner
may em-
ploy other
workmen.

6. IN the event of such default the owner may employ & pay other workmen to finish the sd works, & may use any

(a) This form may suffice for small transactions, but is less protective to the owner than the last precedent.

scaffoldg, plant, & materials on the premes belongg to the contractor for such ppose, & shd he pay, or be liable to pay, a larger sum for finishg such works than the amt he wd be indebted for to the contractor, then the excess shl be pd to him by the contractor.

7. THE owner may, if he thinks fit, require the omission of any of the works, & in that case a proportionate sum shl be deducted. Owner may require omission of works.

8. ALL work rendered necy in conseqce of the doing of the works hby agrd upon shl be deemed to be included in & form pt of this contract, although not mentd in the specificon, & no addonal paymt shl be made to the contractor for the same. Contract to include incidental work.

9. No extra or addonal works shl be done by the contractor except upon the previous order in writg of the owner agreeing to pay for the same, & shd the same be done witht such order the contractor shl not be entled to any addonal paymt for the same. Additional works only upon written order.

10. LASTLY, the contractor shl as well after as bfe he shl have been pd for the sd works & things, & witht any further paymt, for a period of one yr after complon make good any defects whatever in such works & things, & especially in the roofs or drainage of the premes, & the owner may retain a sum not exceedg 10 p. c. of the total contract price until the expiron of such period as a secy for the pformce by the contractor of this stipulon. As WITS, &c. Contractor to make good defects.

III.

AGREEMENT *with a BUILDER or CONTRACTOR. A very Short Form, where the Terms are embodied in the Specification.*

PARTIES, as in Precedent I.

1. THE contractor shl exte, maintain, & do the sevl works & things mentd & described in the specificon or parlars hrunto annexed & signed by the contractor & by —, the architect [surveyor] of the owner, & the plans & drawgs refd to in such specificon or parlars, in & upon the premes thrin Agreement by contractor.

mentd within the time or times & in conson of the paymts to be made to him by the owner as thrin mentd, & shl in all respts be bound by, pform, observe, & fulfil all the condons, stipulons, & provons expd & contd in such specificon or parlars, & wch are expd or intd to be bindg on & to be pformed, observed, or fulfilled by the contractor.

Agreement
by owner.

2. In conson of the premes the owner shl make to the contractor the paymts mentd in the sd specificon or parlars at the respive times & in the mner thrin mentd, subjt to the dedons, retentions, and abatements (if any) to be made thfrom as thrin expd, & shl in all respts be bound by, pform, observe, & fulfil all the condons, stipulons, & provons thrin contd, & wch are expd or intd to be bindg on & to be pformed, observed, & fulfilled by the owner. As wts, &c.

IV.

CONTRACT *between a FIRM of SHIPBUILDERS and a STEAMSHIP COMPANY for building STEAMERS. VARIATIONS where the contract is under SEAL (a).*

AGRMT [under seal] made, &c., betn A. & Co., of, &c., (hinafter called the builders), of the one pt, & the — Co. Limd (hinafter called the pchasers), of the other pt.

Agreement
to build
vessels.

1. THE builders (provd the pchasers shl duly make to them the sevl paymts at the sevl times & in mner hinafter set

As to mode
in which
limited
companies
contract.

(a) As to the mode in which limited companies contract, see the Companies Act, 1867, 30 & 31 Vict. c. 131, s. 37. Where an agreement to which a company is a party, which, like the above precedent, does not require to be by deed, but would be sufficient if in writing, signed on behalf of the company by any person authorised in that behalf, is in fact executed by the company under its common seal, it is believed to be usual to make it under seal as to the other parties also; whether the affixing of the seal of the company would make the instrument chargeable with stamp duty as a deed, if the other parties execute under hand only, seems doubtful, but the practice is to stamp it as a deed. Where a deed is not essential, it will suffice if the agreement is signed by an authorised agent of the company (usually one of the directors and the secretary) There can now rarely, if ever, be any advantage, except with reference to the Statute of Limitations, in employing a deed where an agreement under hand only is by law sufficient.

forth) will build & complete for the pchasers, of the best & most substantial materials & workmanship, two vessels & engines, with outfit & appurts, of the followg class, dimensions, & power, viz. : Class A 90 in Lloyd's Registry, dimensions, length — ft., breadth inside — ft., depth from top to keel — ft., & havg cylinders of — & — inches, & — stroke, & a workg pressure of — lbs. to the square inch, & in all other respts accdg to the specifcons & plans signed by the builders & the pchasers' engineer.

2. THE builders shl build the sd vessels under the superintendce & to the reasble satisfon of an engineer or surveyor for the time being appted by the pchasers, & (provd the paymts afsd are duly made) shl launch the sd vessels & make the same in all respts fit & ready for their trial trips on or bfe the — day of —, & shl forthwith thrafter complete the sd vessels & make the same ready for delivery afloat to the pchasers or their duly authorised agent in a usual & convenient place, in river or dock, on or bfe the — day of —, & in case of default for every week's delay beyond the lastmentd date the builders shl pay to the pchasers the sum of £——, as liquidated & ascertained damages, & not as a penalty, & so on in like proportion for any period less than a week, & such amt may, at the option of the pchasers, be deducted from the pchase moy.

Time for completion.

Penalties for delay.

3. ANY of the dirors of the pchasers or their engineer or surveyor or any other pson authorised in that behalf by writg under the hand of their secretary may, durg the bldg of the sd vessels & on the trial thof, at all reasble times visit & inspect the same, and examine the state & progress of the sd vessels & the workmanship thof, & the materials used & intd to be used in the constron thof, & may by all pper means test & prove the quality & sufficiency of the work & materials thof, & the sd engineer or surveyor may reject any work or material wch may be inconsistent with the sd specifcons or orwise not accdg to contract, & require the same to be removed, replaced, or altered at the expse of the builders.

Works may be inspected on behalf of purchasers.

4. THE pchasers shl pay to the builders as the pchase moy for each vessel the sum of £——, by five equal instalmts of £—— each, to be pd in cash [by acceptces of the pchasers at six months' date], namely, one-fifth when the keel has been

Purchase money to be paid by instalments.

laid, one-fifth when the ship is in frame, one-fifth when the ship is plated, the boiler shells riveted, the furnaces put togr, & the cylinders for the engines cast & bored, one-fifth when the ship is launched & the machy ready to go on board, & the remaing fifth when the ship is completed & ready for delivery after a satisfactory trial. [The sd respive instalmts shl be pd ten days after the builders shl procure & produce to the pchasers at their office in — the certfe in writg of the sd engineer or surveyor that such instalmts are resply due & payable. Provd that in case the sd engineer or surveyor shl at any time neglect or refuse witht reasble cause to give to the builders his certfe in writg that any instalmt is due & payable, when such instalmt is in fact due & payable, the mre in dispute shl be referred to arbitron as hinafter provd].

Vessels
during
building
to be the
property of
purchasers.

5. THE vessels as they are constructed, & all their engines, boilers, & machy, & all materials from time to time intd for them, whether in the bldg yard, workshop, river, or elsewhere shl (a), immedly as the work proceeds, become the ppty of the pchasers, & shl thenceforth be & remain in the posson of the builders only as the trees of the pchasers for the sole ppose of completg the sd vessels & deliverg the same when completed to the pchasers, & shl not be deemed to be within the posson, order, or disposal of the builders for any ppose except the complon thof & the due pformce of this contract, but the builders shl at all times have a lien thron for their unpd pchase moy (b).

(a) If the clause in the text is inserted, the following may be added; as to which, see *Wood v. Bell*, 6 El. & Bl. 355 :—

Additional
clause.

“Immedly upon the paymt of the first instalmt of the pchase moy the builders shl affix the name of the pchasers upon the vessels in a conspicuous place & mner, & shl not remove the same witht their consent.”

Order and
disposition.
Bills of
Sale Acts.

(b) As to what is sufficient to take a ship out of the order and disposition of the builders, see *Woods v. Russell*, 5 B. & Ald. 942; *Wood v. Bell*, 6 El. & Bl. 355; *Exp. Hodgkin*, 20 Eq. 746; *M'Bain v. Wallace*, 6 App. Ca. 588. In *Exp. Hodgkin* the question was raised, but not decided, whether a mortgage of an unfinished ship to a stranger is within the Bills of Sale Acts. In the present case it seems that the ship and materials being in the possession of the builders, the above clause would not be a bill of sale, as it merely states the terms on which the builder holds the ship. At common law the shipbuilder has a lien for his charges (*Franklin v. Hosier*, 4 B. & Al. 341;

6. In the event of the builders makg default in the prosecon of the constron of the vessels, engines, boilers, & machy, or makg default in the delivery of either vessel by the date stipulated, it shl be competent for (but not incumbent upon) the pchasers to take posson of the vessels in their then state, & all materials intd for them as afsd, & to complete the vessels, engines, boilers, & machy, with power for this ppose to enter into any contract with other builders, & to use the yard, workshops, machy, & tools of the builders witht makg any paymt or allowce for such use, & the cost incurred by the pchasers in the exercise of any of the powers of this clause shl be deducted from the pchase moy then unpd, if sufft, & if the same is not sufft shl be made good & pd by the builders. Any exercise of the powers of this clause shl be witht prejudice to any claim for delay under clause 2.

Power to purchasers to complete works on default of builders (c).

7. THE vessels & machy shl be at the risk in all respts of the builders until delivered to the pchasers, & until such delivery the builders shl, at their own cost, keep the same, or such pts thof as shl from time to time be constructed & in their posson, insured agst loss or damage by fire in one or more first-class office or offices [to be approved by the pchasers in the jt names of the builders & the pchasers] in an amt exceedg by £—— for each vessel the pchase moy then pd for the same, & shl deposit the pols for such insurces with the pchasers [& in case the builders shl neglect to insure the sd vessels as afsd or to keep such insurces on foot, the pchasers may effect & keep up such insurces & deduct the expses thof from the pchase moy], & in case the sd vessels or their machy or any pt thof shl be destroyed or damaged by fire, the moy reced in respt of the insurces thof shl be applied in rebldg or reinstatg the same.

Insurance.

8. No extension of time shl be allowed, & no paymt what-

No payment for extra work.

Exp. Willoughby, 16 Ch. D. 64). It is conceived that if (as is sometimes done) the clause gave the purchasers only a lien for the instalments of purchase-money paid by them until completion, it would be void under the Act of 1882; the case being different from those under ordinary building contracts referred to above, p. 7, note (g). That an unfinished ship is liable to be distrained upon for rent owing by the builders as lessees of the yard or dock, see *Clarke v. Millwall Dock Co.*, 17 Q. B. D. 494.

(c) As to this clause not extending to bankruptcy, see *Exp. Barter*, 26 Ch. D. 510; *supra*, p. 9, note (b).

Purchasers
may, by
writing,
require
alterations.

ever shl be made for extra work & materials (but such extras shl be considered as done for the satisfon of the builders), unless bfe the same are done or provd, the pchasers by writg under the hand of one of their dirors & their secretary direct such extras to be done or provd, & agree to the extension of time & increase of cost to be allowed in respt thof. THE pchasers shl be at liberty to require any alterons or addons to be made in or to the vessels, engines, boilers, or machy [provd such alteron or addon does not injuriously affect the genl intention and design of the sd specificon &], provd they do so in writg under the hand of one of their dirors & their secretary, in wch case the terms & prices of such alterons & addons, & the extension of time (if any) to be allowed in respt thof shl be agrd upon in writg, & this agrmt shl thenceforth take effect as varied by such supplemental agrmt.

Trial trips.

9. THE trial trips shl be [betn the ports of — & — & shl be] at the risk & expse, in all respts, of the builders, who shl find the crew necy for the safe navigon of the vessels & for the engine departmts on such trial trips, & the coals & engine stores, & also the marine insurce on such trials, & no delivery shl be considered complete until after a trial satisfactory to the pchasers' engineer or surveyor.

Extension
of time in
case of
strike or
delay in
payment
of any in-
stalment
(a).

10. IN the event of a strike or lock out of workmen takg place in the district & extendg to the builder's yard, or any other place where the materials for the sd vessels or the machy thof are prepared, or in case the hours of labour of the workmen employed by the builders shl be reduced below those at psnt customary in their works, so as to interfere with the constron of the sd vessels, & provd that notice in writg of such strike or lock out or redon in the hours of labour shl be immedly given by the builders to the pchasers at their office in —, or in case of any delay takg place in the paymt of any instalmt of the pchase moy, the builders shl be allowed one day's extension of time for the bldg & complon of the sd vessels for each day of strike or lock out or delay in paymt, or, in case of such redon in the hours of labour as afsd, shl be

(a) As to the meaning of the word "strike," see *Stephens v. Harris*, 56 L. J., Q. B. D. 516.

allowed a pper extension of time to be settled in case of diffe by a referee as hinafter provd.

11. In the event of any instalmt of the pchase moy remaing unpd for fourteen days after the same is due, the builders shl be entled to intt thron at £2 p.c. p.a. over the current Bank of England rate, & shl be at liberty to sell the vessel upon wch such instalmt may be overdue, as she may then lie, with the engines, boilers, & machy, or may complete her & sell her after complon by public auction or private contract, & any loss on such resale shl be made good by the pchasers, & any balce of the proceeds of such sale wch may remain after satisfyg all claims of the builders shl be pd to the pchasers.

Provisions
in case of
default in
payment of
purchase
money.

12. In the event of any defective work or material being discovered in the sd vessels, or eir of them, or the engines, boilers, or machy thof within six months after the same shl have been delivered to the pchasers, wch shl be proved by them to have existed at the time of such delivery, then & in such case the same shl be repaired & replaced by the builders or at their expse, but this shl not include consequential damage or any extra cost beyond the expse of such repairs if the same were done in the United Kingdom.

Defective
work.

13. *Arbitron Clause.* See ARBITRON.

IN WITS whof the sd pties hto of the first pt & one of the dirors & the secretary of the sd — Co Limd have hrunto set their hands, or, “ the sd pties hto of the first pt have hrunto set their hands & seals, & the sd — Co Limd have hrunto affixed their common seal ” the day & yr first above written.

V.

AGREEMENT, *engaging a MANAGER of a BUSINESS, or other OFFICER to be paid a SALARY, and a PERCENTAGE on the GROSS RETURNS or PROFITS. VARIATIONS, where he is to go ABROAD.*

PARTIES, A., principal, 1 ; B., manager, 2.

1. THE sd B. shl durg the term of — yrs from the date hrof, if both pties shl so long live, & the sd A. shl continue

Engage-
ment of B.
as manage
for a term.

to carry on the business of —, [at —, in India], whether alone or in ptnp with any other pson or psons, serve the sd A. as manager, or "superintendent," or "foreman" [at — afsd] of the sd business, & shl give his whole time & attention to the sd business (b), & shl use his best endeavours to improve & extend the same, & shl in all respts diligently & faithfully obey & observe all lful orders and instrons of the sd A. in relon to the conduct of the sd business, & shl not, witht his consent, divulge any secrets or dealgs relatg thto.

Manager to
proceed
abroad.

[2. THE sd B. shl when required by the sd A. proceed to —, by —, his boat & railway fares, hotel & other expses on the journey being pd by the sd A.]

To keep
accounts,

3. THE sd B. shl, whenever required by the sd A., render to him a full acct of all dealgs & transons in the sd business, & shl keep at the place of business at — pper books of acct, contg entries of all moys reced & pd, and all goods bought, or reced, or sold, or delivered out, & all parlars relative thto, & other mres necy to show the state of the sd business, & shl duly acct for all moys & secs belongg to the sd A., wch shl come into the hands or power of the sd B., & forthwith pay the same to the sd A., or to the bankers for the time being of the sd A. to his credit, except only such moys as the sd B. shl be authorized by the sd A. to retain for the immediate requirements of the sd business.

and pay
over
money.

To be paid
a salary.

4. THE sd. A. shl pay to the sd B. durg the continue of his engagemt & provd he shl duly observe & pform the agrmts hrin on his pt contd, the salary of £— p.a., by equal qtrly paymts, on the — day of —, &c., [on the usual qtr days] in each yr, witht any dedon except income-tax, the first paymt to be made on the — day of — next: [AND shl also pay to the sd. B. every yr such further sum as shl be equivalent to [10] p.c. on the gross returns of the sd business [at —], witht deductg intt upon capital, rent, rates, taxes, repairs, wages, or other outgoings or expses, but witht takg into acct bad or doubtful debts, or, "as shl be equivalent to [10] p.c. on the net profits, if any, derived from the sd business," such

And per-
centage
on gross
returns.

Or on net
profits.

(b) That in the absence of a negative stipulation the manager could not be restrained by injunction from giving part of his time to another business, see *Whitwood Chemical Co. v. Hardman*, [1891] 2 Ch. 416.

last-mentd yrly paymts to commce, & be calculated, as from the — day of — last, & to be payable on the — day of — in each yr]. AND a proportionate pt of the sd salary of £— shl be pd up to the death or terminon of the engagemt of the sd B. from the last precedg day of paymt [togr with a sum equivalent to [10] p.c. on the gross returns, or, “net profits,” wch shl have arisen from the sd business since the — day of — then last past].

[5. WITH a view to the ascertaing of the amt of such further sum as afsd, the accts of the sd business shl be made up by, or under the diron of, the sd A. every yr on the — day of —, & also on the day on wch the engagemt of the sd B. shl terminate, or as soon after each such day as may be, & a pper balce-sheet thof shl be made out & furnished as soon as may be to the sd B., & shl, on being verified by a statutory declon of the sd A., or of some pson who shl have been employed by him to make up the sd acct, be bindg & conclusive upon the sd B.]

Annual
accounts.

[6. NOTHING hrn contd shl be construed as in any sense creatg a ptnp betn the sd A. & B., or as givg to the sd B. any of the rts or renderg him subjt to any of the liabilities of a ptner except such a rt to an acct of the gross returns [net profits] of the sd business as shl be necy for the ppose of ascertaing the amt of any further sum payable to him as afsd, in case such amt shl not be ascertained & verified in mner hinbfe provd.]

Agree-
ment not
to create a
partner-
ship (c).

7. THE sd B. shl also durg the continue of his engagemt be provd by the sd A. with a suitable residece at —, or else-where, free from rates & taxes, or, “with good & sufft meat, drink, lodging, washg, & fuel, & shl, if required by the sd A., reside in the house in wch the sd business is now, or shl for

Board and
lodging.

(c) This agreement would not create a partnership even as the law stood before Bovill's Act, 28 & 29 Vict. c. 86, s. 2, which has been repealed, but, in effect, re-enacted by the Partnership Act, 1890, 53 & 54 Vict. c. 39, s. 2 (3). As to sharing gross returns, see s. 2 (2). Even an agreement to share profits and losses did not necessarily constitute a partnership, if on the whole agreement it appeared that the person so sharing was not intended to be a partner, but only an employé or servant: *Walker v. Hirsch*, 27 Ch. D. 460. As to an agreement to share profits creating a partnership, see, before the late Act, *Badeley v. Consolidated Bank*, 38 Ch. D. 238; Lindley on Partnership, pp. 23—76; and after the Act, *Davis v. Davis*, [1894] 1 Ch. 393.

As to what
creates a
partner-
ship.

the time being be carried on, & shl in that case have the use of — rooms thrin, free from all rent, rates, & taxes in respt thof.”

Termination by notice.

8. EIR of the pties hto may terminate the engagemt of the sd B. at any time bfe the expiron of the sd term of — yrs, on givg, or sendg by post in a registered lre to the other pty, six calr months' notice in writg, such notice to be given or sent to the sd A. at his usual place of abode or business in England, & such notice to be given or sent to the sd B. at his usual place of abode, or at the countg-house at wch the sd business shl then be carried on [in India], & upon the expiron of six calr months from the date of such notice being given or posted, the sd engagemt shl determine: Provd always that the sd A. may terminate the sd engagemt at any time on paying to the sd B. in lieu of such notice as afsd, six calr months' salary in advce [with a further sum in lieu of such percentage as afsd, for such six months, equal to the sum wch became payable by way of percentage for the then last precedg six months, for wch accts shl have been made out as afsd].

Or on payment of six months' salary.

Provision for default or incapacity of manager. Power to suspend, or determine.

9. If the sd B. shl at any time wilfully neglect or refuse, or from illness or any other cause, become or be unable to pform any of the duties devolvng upon him under this engagemt, it shl be lful for the said A. to suspend the salary [and further sum by way of percentage] of the sd B. durg such neglect, refusal, illness, or inability as afsd: AND further, it shl be lful for the said A. in the event of such refusal or neglect of the sd B. or his becomg incapacitated by illness or orwise, immedly to terminate the engagemt of the sd B. witht givg any such notice, or makg such paymt in advce as is provd for in clause 8.

Expenses of return journey to be paid.

[10. THE sd A. shl pay the boat & railway fares, hotel & other expses of the journey of the sd B. on his return to England in any of the follg events—

On termination by notice,

First. If the sd A. shl terminate the engagemt of the sd B. by notice psuant to the 8th clause, & the sd B. shl start on his journey to England within three calr months from the expiron of such notice.

or in case of illness,

Second. If the sd A. shl terminate the engagemt of the sd B., psuant to the 9th clause, in consequence of the illness of the sd B., & such illness shl not have been occasioned by the fault of the sd B., & the sd B. shl start on his journey to England

within three calr months from such terminon of his engagemt, or so soon afterwards as he shl be able to journey with safety.

Third. If the engagemt of the sd B. shl continue until the expiron of the sd term of — yrs, & he shl always conduct himself pperly in the pformce of his duties, & shi start on his journey to England within three calr months from the expiron of the sd term of — yrs.] or at end of engagemt.

[11. In case the engagemt of the sd B. shl at any time, within two yrs from the date of this agreemt, be terminated by notice given by the sd B. psuant to the 8th clause, or be terminated from any cause other than the illness of the said B., psuant to the 9th clause, he, the sd B., shl thrupon immedly repay to the sd A. the sum pd by the sd A. psuant to the 2nd clause. SUCH sum may be recovered by the sd A. as a debt due from the sd B., in an action or orwise in any Court of competent jurisdon [in England or India]. Provd that this clause shl not prejudice or affect any other claim or remedy of the sd A. agst the sd B. for breach of contract.] Repayment of passage money.

[12. THE sd B. shl, at his own expse, find & provide two responsible sureties to the amt of £—— each or the guarantee of a responsible Co to the amt of £—— for his good conduct, & for the due pformce by him of this agrmt.] Sureties.

IN WITS, &c.

VI.

AGREEMENT *under SEAL with* TRADERS *for a* LOAN *for a* TERM of YEARS *at* INTEREST *and a* SHARE of PROFITS (d).

THIS INDRE, made the — day of —, BETN A. & B., Parties. carryg on business in ptnp togr as — at —, under the

(d) The main point is to protect the lender from being liable as a partner to creditors, as to which such an agreement as the above would clearly be within the protection of the Partnership Act, 1890, 53 & 54 Vict. c. 39, which has repealed, but, in effect, re-enacted the provisions of Bovill's Act, 28 & 29 Vict. c. 86 (so far as the protection is needed, the repealed Act having, as it seems, in this respect done no more than declare what was already the law); see the late Act, s. 2 (3), and s. 3; and the following cases (before the Act) as to what constitutes a partnership: *Bullen v. Sharp*, L. R. 1 C. P. 86; As to what constitutes partnership.

Recital. style or firm of A. & Co. (hinafter reld to as the borrowers) of the one pt, & C. of, &c. (hinafter reld to as the lender, wch expression shl be deemed to include his exs, ads, & assns, where the context so admits), of the other pt: WHAS the lender has this day pd & advcd by way of loan to the borrowers the sum of £—— for the term of —— yrs from the date hrof upon havg the repaymt of the same with such intt as is hinafter mentd scd in mner hinafter appearg, NOW THIS INDRE WITNETH that it is hby covtd & agrd by & betn the sd pties hto as follows:—

Covenant to pay principal, interest and share of net profits.

1. *It & sevl covt by the borrowers with the lender*, that the borrowers will pay to the lender the sum of £—— on the —— day of ——, AND until the sd ppal sum shl be repd will pay to him intt thron or on so much thof as shl remain owing at the rate of —— p.c. p.a. by qtrly paymts on the usual qtr days in each yr, AND will also pay to him, by way of addonal intt, for each yr durg wch the borrowers shl make any net profits, such further sum as shall be equivalent to one equal —— part of such net profits derived from the sd business, such last-mentd yrly paymts to be payable on the —— day of —— in each yr.

2. *Yrly Accts*, see p. 19.

What are net profits.

3. THE net profits shl, for the ppose of ascertaing the amt of such addl intt as afsd, be taken to be the amt of the gross rects after deductg intt on the sd sum of £—— at the afsd rate of —— p.c. p.a., as well as intt at the like rate on any other

Holme v. Hammond, L. R. 7 Ex. 218; *Mollwo, March & Co. v. The Court of Wards*, L. R. 4 P. C. 419; *Exp. Mills*, 8 Ch. 569; *Ross v. Parkyns*, 20 Eq. 331; *Syers v. Syers*, 1 App. Cas. 174; *Exp. Sheil*, 4 Ch. D. 789; *Exp. Tennant*, 6 Ch. D. 303; *Exp. Delhasse, In re Megevand*, 7 Ch. D. 511; *Pooley v. Driver*, 5 Ch. D. 458; *Walker v. Hirsch*, 27 Ch. D. 460; *In re Stone*, 33 Ch. D. 541; *Badeley v. Consolidated Bank*, 34 Ch. D. 536, reversed on appeal on the question of partnership or no partnership, 38 Ch. D. 238; and after the Act, *Davis v. Davis*, [1894] 1 Ch. 393. The result of the Act and the decided cases appears to be that a partnership is not necessarily excluded by a provision such as that in clause 7, nor by any means necessarily implied by a sharing of profits, but that the whole of the agreement is to be looked at to ascertain whether the meaning is that the parties should carry on the business as principals and as agents for each other, i.e., as a joint business, or that it should be the business of one only. See further Lindley on Partnership, pp. 23—76. As to agreements of the nature of that in the text, see *Re Vince*, [1892] 1 Q. B. 587, 2 Q. B. 478, where, however, on the appeal the agreement was held void for obscurity, *Re Hildesheim*, [1893] 2 Q. B. 357.

capl employed by the sd borrowers in the sd business & all paymts for rent, rates, taxes, repairs, wages & other workg expses & outgoings pperly deducted in the estimon of net profits.

4. THE borrowers shl keep all usual & pper books of acct of & concerng all pchases & sales of goods made by them, & of all other mres & transons concerng the prems, & the sd books & accts & all bills, notes, secs for moy, lres, & other writgs relatg to the mres afsd in the posson or under the control of the borrowers shl be carefully preserved by them (damage by fire or other inevitable accident only excepted) & shl at all reasble times be open to the inspon of the lender, who or whose agent or agents shl have full liberty to make copies or extracts of or from the same or any of them.

Borrowers
to keep
proper
books of
account.

5. THE lender may require repaymt of the sd sum of £—— to be made bfe the sd —— day of —— if the borrowers shl cease to carry on the sd business [or shl, witht the consent in writg of the lender, admit any ptner with them in the sd business], or if any qtrly paymt of the sd intt on the sd sum of £—— or any sum payable by way of addonal intt as hinbefe provd shl be in arrear for 28 days, or if the lender shl have given to the borrowers or sent by post to their place of business for the time being not less than —— calr months' notice in writg in that behalf.

When
lender may
require re-
payment,

on notice.

6. It shl be lful for the borrowers to repay the sd sum of —— at any time bfe the sd —— day of —— on givg to the lender or sendg by post to his usual or last known address not less than —— calr months' notice in writg of their intention in that behalf, such notice to expire on the —— day of —— in any yr.

Borrowers
may repay
on notice.

7. Agrmt not to create a ptnp, see p. 19. [Arbitron clause, see ARBITRON.] IN WITS, &c.

VII.

AGREEMENT *between a BANKING COMPANY and a MANAGING DIRECTOR of a BRANCH ABROAD.*

PARTIES, The ——— Bank Limd (hinafter called the Bank), 1.
A. of, &c. (hinafter genlly called the Managing Diror), 2.

A. to be
managing
director.

1. THE sd A. shl become & be from & after the ——— day of ——— Managing Diror of the business of the Bank, at its branch establishmt opened or forthwith to be opened in ——— (hinafter called the Branch).

Powers and
duties.

2. THE Managing Diror shl possess all such powers, & pform all such duties as shl be necy usual or convenient to enable him effectually to manage & superintend the business of the Branch, subjt nevs to the stipulons hinafter contd & to any such addonal or other stipulons & condons as may from time to time hrafter be created or imposed by any resolons of the Bank or its Board of Dirors.

Managing
director to
pay out-
goings and
hire clerks.

3. For the pposes of the business at the Branch, the Managing Diror shl have power to authorize & make all necy expenditure & pay all necy outgoings, & to hire & employ all such clerks, messengers, or other servants as he shl consider to be required for carryg on the business of the Branch, & shl also have the absolute control over, & also power at his absolute discrion to dischge any such psons, save & except that he shl, if & when exply required so to do by the Bank or its Dirors, hire, employ or dismiss any clerk, messenger, or other servant, whether such hirc, employmt or dismissal shl be accdg to his wish or not.

To transmit
to Bank
statement
of out-
goings.

4. THE Managing Diror shl make out & deliver, or transmit to the Bank or its Board of Dirors, or to such pson or psons as they shl require from time to time, a statemt of such expenditure & outgoings, & of the psons so employed, & the amt of the salaries, wages, or other remuneron to wch they are resply entled, & in respt of what mre or services such expenditure or outgoings, salaries, wages, or other remuneron is or shl be payable, togr with such other parlars in relon to such mres or psons as the Bank or its Dirors shl from time to time require.

To keep
accounts.

5. THE Managing Diror shl keep, or cause to be kept, full & correct entries, minutes or accts of all Bankg accts opened

or withdrawn, & of all rects of moys, secs or effects, & of all advces made & discounts or credits granted, & of all special operons entd into on behalf of, or connected with, & of the genl assets, balces, debts, & credits of the Branch, & also all such further or other parlars & details as shl from time to time be required by the Bank or its Dirors with referce thto.

6. THE Managing Diror shl also from time to time, as & when he shl be required by the Bank or its Dirors so to do, compile or extract, & transmit to the Bank or its Dirors at its chief establishmt in London or elsewhere, as required, or to any officer thof or other pson or psons who shl be duly named for that ppose, an abstract, epitome, or statemt in full detail of all parlars & ordinary or special circes relatg to the sd business at or connected with the Branch, or to his managemt of the same, & parlarly & immedly upon the occurre of any circe callg for special attention on the pt of the Bank or its Dirors, shl transmit to the sd chief establishmt full & sufft notice thof, & also shl at any time permit the Bank or its Dirors, or any pson or psons duly authorised by the Dirors in that behalf, to inspect & examine all books of acct, entries, minutes, & other parlars so kept by him, & shl give to the Bank or its Dirors, or any pson or psons authorized by them as afsd, all such informon, facilities, & assistce as shl be reasbly required, to enable them or him fully to understand any such accts or other parlars.

To transmit
to Bank
statement
of business,

and impor-
tant infor-
mation.

To permit
inspection
of accounts.

7. THE Managing Diror shl not divulge or make known in any mner whatsr any dealgs or concerns of or relatg to the business of the Bank, wheresr carried on or transacted, witht the authority of the Bank or its Dirors, but shl at all times be true & just to the Bank in all his dealgs, & shl not injure or unduly pledge its credit or assets, or employ or make liable the same save in the usual & regular course of business, & shl use his best endeavours & exertions to promote the welfare of the Bank & its business, & shl give his whole time & attention to the business of the Branch, & shl not give his time or psonal attention to any other business or mercantile transons whatsr (e).

Faithful
dealing.

(e) As to this being enforceable by injunction, see *Whitwood Chemical Co. v. Hardman*, [1891] 2 Ch. 416.

Guarantee. 8. THE Managing Diror shl at his own expse, if & when required by the Bank or its Dirors, procure a guarantee or guarantees for his duly & faithfully executg & pformg the duties of his sd office & the provons of this agrmt in every respt to such an amt as the Bank or its Dirors shl require, not exceedg £——, from by or with some responsible pson or psons, or Co. or Cos, & shl deposit with the Bank the instrumt or instrumts by wch the same shl be effected.

Salary. 9. THE Bank shl pay the Managing Diror after the rate of £—— British sterlg moy p.a. for his services as such Managing Diror by equal qtrly paymts, & by way of further remuneron for his services in each yr durg the term of three yrs from the sd —— day of ——, a commission at the rate of £15 for every £100 of net profits made durg each of such three yrs by the business of the Branch, after deductg all usual and necy outgoing & expses thof & intt on capl at the rate of £5 p.c., & after the expiron of such three yrs & durg the term of five yrs thrafter, a commission at the rate of £10 for every £100 of such net profits in each of such five yrs after such dedons as afsd : But so, nevs, that in no yr durg such five yrs shl the commission so to be reced by him be in the whole less than the greatest amt reced by him on acct thof in any one of the three yrs precedg such term of five yrs.

**Commis-
sion.**

**First year
to be pro-
bationary.** 10. THE first yr of this agrmt & of the engagemt hby made of such Managing Diror shl be considered to be probationary or experimental, & at the end of such first yr it shl be lful for eir pty hto by notice in writg to the other pty forthwith to terminate this psnt agrmt & the engagemt hby made.

**Bank may
terminate
engage-
ment at
the end
of three
years.** 11. It shl be lful for the Bank or its Dirors to terminate this agrmt & the engagemt hby made at the expiron of three yrs from the sd —— day of —— by givg at least —— calr months' prior notice in writg to the Managing Diror.

**Termina-
tion by
notice.** 12. EIR of the pties hto may at any time terminate this agrmt & the engagemt hby made, by givg to the other pty hto —— calr months' notice in writg, but so nevs that eir pty givg such notice under this psnt provon shl, at the expiron thof, pay to the pty receivg the same the sum of £——, as liquidated damages for such terminon of this agrmt, except that in case the Managing Diror shl misconduct himself in his sd office, or fail to observe & pform the provons of this

agrmt, no such sum by way of liquidated damages shl be pd to him.

13. ANY notice hby authorized or required to be given by the Bank to the Managing Diror shl be sufftly given by postg the same in a registered lre addressed to him at the Branch or by leavg the same in his usual private room at the Branch, & any notice hby authorised or required to be given by the Managing Diror to the Bank shl be sufftly given by postg the same in a registered lre addressed to the Manager of the Bank at the ppal office in London or elsewhere.

Notices.

14. LASTLY, this agrmt shl in all respts be construed & carried into effect accdg to the law of England, so far as may be & circes will permit. IN WITS, &c.

Law of England to apply.

VIII.

AGREEMENT *under SEAL appointing an EDITOR of a NEWSPAPER.*

PARTIES, A. & B., Proprietors, 1. C., Editor, 2. WHAS the sd A. & B. carry on business in co-ptnp as proprietors of a certain newspaper or periodical called, &c., printed & published at, &c.: AND whas it has been agrd that the sd C. shl be appted resident editor of the sd newspaper or periodical for the period at the salary & subjt to the covts & condons hinafter mentd & contd, NOW THIS INDRE WITNETH that it is hby covted & agrd by & betn the sd pties hto as follows:—

Parties.
Recitals.

1. THE sd A. & B. hby appt the sd C. resident editor of the sd, &c., for the term of five yrs commencg from, &c.

Appoint-
ment of C.
as editor.

2. THE sd C. shl durg the sd term conduct all the business of editg & orwise in relon to the sd newspaper subjt as hinafter mentd, AND shl have full power to appt & dismiss all sub-editors, correspondents, contributors, clerks, servants, & all other psons employed in or about the sd business, AND also, in cannon with the sd business but not orwise, full powers of purchasg stock, signg bills & rects, increasg & diminishg salaries, prosecutg & defendg actions & legal pcdgs, & genlly

Powers of
manage-
ment.

doing all things which he may bonâ fide & to the best of his judgment consider to be conducive to the intt of the sd business.

Salary.

3. THE sd C. so long as he shl be such resident editor, shl be allowed out of the ptnp funds the sum of £—— per calr month as salary, wch shl be pd or may at his option be retained by him out of any moneys of the sd ptnp comg to his hand in cannon with the sd business.

Not to do certain things without consent.

4. NOTHING hrin contd shl be construed to authorise the sd C. witht the previous consent in writg of the sd A. & B. or other the ptners for the time being in the sd business (hinafter called the proprietors) to mtge or pledge any of the ppty of the sd ptnp as secy for any loan or debt, or to expend any moy belongg to the sd ptnp for his private pposes or to pchase real ppty with the ptnp funds or to remove the press or publishg office or establishmt (except so far as may be temporarily necy for any rebldg, repairs or alterons, or by reason of fire or other accident), or to establish any branch presses or offices, or make any material alteron in the mode of carryg on the sd business.

Covenant by C. to conduct business to best of ability.

To reside and obey instructions.

5. THE sd C. will at all times durg the sd term conduct the sd business & edit the sd paper to the best of his ability, judgment & discron, so as to advce the intts of the sd ptnp, AND for that ppose will genlly reside at the sd place of business or such other place as may be fixed upon as the headqtrs of the sd newspaper [& shl at all times be subjt to & bound by all instrons and dirons wch may be given to him by the proprietors touchg the managemt of the sd business.]

To remit dividends and furnish accounts, &c.

6. THE sd C. will durg the sd term duly remit qtrly divds (if the state of the ptnp funds shl admit of his doing so) to the proprietors, transmit to them qtrly statemts of acct & reports of the affairs of the ptnp, & give to them all informon that may be reasbly required.

To hold the office during the full term unless prevented by illness, &c.

7. THE sd C. will hold the sd office of resident editor (unless prevented by death or illness or reled thfrom by the consent in writg of the proprietors) for the sd term of five yrs, & will at the expiron or sooner determinon of the sd term, take all pper measures to hand over the sd office to any successor duly apptd unless he the sd C. shl be reapptd for a fresh term.

Not to conduct

8. THE sd C. will not durg the sd term embark in or under-

take the conduct or managemt of or be in any way intted or concerned directly or indirectly in any other newspaper, journal, or periodical [whose intts are antagonistic to or incompatible with those of the afsd newspaper]. any other newspaper.

Add provons, if intd, for terminatg agrmt (see above Prects. V. & VII.) & arbitron clause, see ARBITRON. IN WITS, &c.

IX.

AGREEMENT *to serve as an ASSISTANT to two PERSONS in PARTNERSHIP as MEDICAL PRACTITIONERS and not to practise in the DISTRICT for ——— YEARS afterwards.*

PARTIES, A. & B. (practisg in ptnp togr as physicians & surgeons at, &c.), 1. C., assistant, 2.

1. THE sd A. & B. hby agree to engage the sd C., & the sd C. hby agrees to enter into & continue in the service of the sd A. & B., or the survor of them, as assistant in every branch of their profession, practice, & business of physicians, surgeons, accoucheurs, & apothecaries from the ——— day of ——— for the period of ——— yrs, & thrafter until the engagemt of the sd C. is terminated by notice as hinafter provd. Engage-
ment.

2. THE sd C. shl, while he shl continue in the service of the sd A. & B., or the survor of them, faithfully & diligently serve them or him as such assistant as afsd, & devote his whole time to such service, & at all times obey & comply with their or his lawful commands & dirons in relon to the sd business & practice, & to the utmost of his skill & ability serve & promote the intts of the sd A. & B., or the survor of them, & shl not at any time [except in the case of sickness or unavoidable accident (*f*)] absent himself from their or his service witht their or his consent, and shl not, witht such consent divulge or disclose any of the secrets, concerns or affairs of the sd business or practice. Diligent
servico.

(*f*) As to the law in the absence of any provision for this event, see *Robinson v. Davidson*, L. R. 6 Ex. 269; *Belfast Banking Co. v. Hamilton*, 12 L. R. Ir. Q. B. 105.

Salary.

3. THE sd A. & B., or the survivor of them, shl pay to the sd C., while he shl remain in their or his service, and duly pform the agrmts on his pt hrin contd, a salary of £—— p.a., & so in proportion for any less period than a yr, by eql [monthly] paymts on the —— day of ——, the first paymt thof to be made on the —— day of ——.

Absence from unavoidable cause.

[4. IN case of the absce of the sd C. from the service of the sd A. & B., or the survivor of them, owing to sickness or other unavoidable cause durg a continuous period of more than —— days, the sd A. & B., or the survivor of them, may if they or he think fit appt a substitute for the sd C., & may remunerate him out of the salary [& share of profits] hby provd for the sd C.]

Absence without leave.

[5. THE sd C. shall pay the sum of £—— as liquidated damages to the sd A. and B., or the survivor of them, for every day durg wch he shl absent himself from their or his service witht their or his consent for any reason other than sickness or other unavoidable cause.]

Add Clauses givg C. a share in gross or net profits—declarg that no ptnp is created,—& providg C. with board & lodging, if so intd. See Clauses 4, 6, & 7, of Precedent V.

Termination on notice or dissolution of partnership.

6. THE engagemt of the sd C. may be terminated at any time after the —— day of ——, by eir pty, on givg to the other pty —— calr months' notice in writg, expirg at any time after such day, or leavg such notice addressed to such other pty at the surgery, or place of business, of the 'sd A. & B., or the survivor of them : AND the engagemt of the sd C. shl also cease in the event of the dissolon at any time of the ptnp of the sd A. & B. orwise than by death.

Not to practice in district (g).

7. THE sd C. shl not at any time, while he shl remain in

(g) In this clause, as well as in the rest of the agreement, the possibility of a dissolution of the partnership between A. and B. has to be considered ; see *Palmer v. Mallett*, 36 Ch. D. 411. That an unqualified practitioner cannot enforce such an agreement against a former assistant, see *Davies v. Makuna*, 29 Ch. D. 596. The benefit of such a covenant is assignable, and would pass under a sale of the goodwill: *Jacoby v. Whitmore*, 32 W. R. 18.

As to an agreement of this kind where the employé is an infant, see *Evans v. Ware*, [1892] 3 Ch. 502.

Agreements in restraint of trade.

As to agreements in restraint of trade, the following rules appear to be established : (1) The agreement, whether under seal or not, must be for a *bonâ fide* valuable legal consideration, but the sufficiency of the consideration

the service of the sd A. & B., or the survivor of them, or within
 — yrs after he shl have left such service, follow, use, or

will not now be enquired into (*Hitchcock v. Cotter*, 6 Ad. & E. 438; *Collins v. Locke*, 4 App. Cas. 686); and it should appear on the face of the deed, though it may be implied (*Gravelly v. Barnard*, 18 Eq. 518). (2) The restraint must be partial; if unlimited as to both time and place, though limited to a particular business or trade, it will, it appears on the balance of the authorities, be void by virtue of a general rule which is independent of the question of reasonableness (*Davies v. Davies*, 36 Ch. D. 359), unless the special nature of the subject matter itself creates a limit, as in the cases of disclosure of a trade secret, and similar cases (*Wallis v. Day*, 2 M. & W. 273; *Leather Cloth Co. v. Lonsont*, 9 Eq. 345; *Nordenfelt v. Maxim-Nordenfelt, &c., Co.*, [1894] A. C. 535). (3) The restraint must be reasonably necessary for the protection of the covenantee (see per Tindal, C. J., in *Horner v. Graves*, 7 Bing. 743; and the judgments in *Rogers v. Maddocks*, [1892] 3 Ch. 346); what is reasonable must depend on the nature of the contract, which is usually either one of service, or for the sale of a business, or for dissolution of partnership, and on the general circumstances of the case. The following, however, are the general features of the law upon the subject: (a) A restriction such as is usual in contracts of service, confined to a particular business and to a limited area for a limited time, has never been questioned. (b) The restraint may be unlimited as to time, i.e., practically for the life of the covenantor, and need not be limited to the life of the covenantee, or to such time as he shall carry on business (*Hitchcock v. Cotter*; *ubi sup.*; *Jacoby v. Whitmore*, 32 W. R. 18). A limit of time may, however, be necessary in the absence of any other limit. (c) A restriction not to carry on any business at all is void, however limited as to time and place (*Avery v. Langford*, Kay, 663; *Vernon v. Hallam*, 34 Ch. D. 748; *Baker v. Hedgecock*, 39 Ch. D. 520; and see *Perls v. Saalfeld*, [1892] 2 Ch. 149, where the covenantee was made the arbiter as to whether the business competed or not). (d) A covenant not to solicit customers of the covenantee must be confined to customers existing at the time of the covenant, or during the period of the covenantor's service, and will be void, if extending to all customers at any time (*Baines v. Geary*, 35 Ch. D. 154). (e) As to limits of space: the smallest space ever held to be unreasonable was that of 100 miles from the covenantee's place of business (*Horner v. Graves*, 7 Bing. 735), but it is a matter depending on the circumstances of each case: in a solicitor's business, London and 150 miles round (*Bunn v. Guy*, 4 East, 190), in a dentist's business, London (*Mallan v. May*, 11 M. & W. 653), and in sales of patented inventions, the whole of Europe, or at least the United Kingdom (*Jones v. Lees*, 1 H. & N. 189, 26 L. J. Ex. 9; *Leather Cloth Co. v. Lonsont*, *ubi sup.*), have been held to be reasonable: and there is no absolute rule against a restraint entirely unlimited as to space, if the nature of the trade requires it (*Bryson v. Whitehead*, 1 Sim. & Stu. 74; *Rousillon v. Rousillon*, 14 Ch. D. 351; *Badische, &c., Fabrik v. Schott*, [1892] 3 Ch. 447; *Nordenfelt v. Maxim-Nordenfelt, &c., Co.*, [1894] A. C. 535, where the subject is discussed at length in the judgments of Lindley and Bowen, LL.JJ.); on the other hand, "in any of the towns or places in England or Scotland in which the covenantees might have been practising" (*Mallan v. May*, *ubi sup.*), and "within 600 miles from London or Westminster" (*Price*

Limit as to time.

Not to carry on business at all.

Not to solicit customers.

Limit as to space.

Divisibility of covenants.

carry on at ——— afsd, or within ——— miles thof, the profession, practice, or business of a physician, surgeon, accoucheur, or apothecary, eir in his own name, or in the name or names of any other pson or psons, & eir directly or indirectly, AND shl not durg such period, enter into the service of any pson or psons other than the sd A. & B. as assistant or orwise in, or in relon to, any such profession, practice or business as afsd within the limits afsd, and shl not durg the period afsd endeavour or attempt, directly or indirectly, to induce any pson or psons to cease from employg the sd A. & B., or the survor of them, in the way of their or his profession, practice, or business, or to induce any pson or psons within the limits afsd, so to employ any pson or psons other than the sd A. & B., or one of them. In wits, &c.

X.

AGREEMENT *between a MANUFACTURER and a TRAVELLER with* PROVISION *for an* ULTIMATE PARTNERSHIP.

PARTIES, A., of, &c., manufacturer (hinafter called the employer), 1. B., of &c., commercial traveller (hinafter called

“So far as
the law
allows.”

Wife of
covenantee
trading.

v. Green, 16 M. & W. 346), are instances of unduly wide limits. (4) The Courts are disposed to put a reasonable construction on a covenant which, taken literally, would be too wide (*Mills v. Dunham*, [1891] 1 Ch. 576; *Perls v. Saalfeld*, *ubi sup.*); and (5) Where a covenant is divisible, the part which is good may be upheld, *Mallan v. May*, *ubi sup.*; *Baines v. Geary*, *ubi sup.*; *Baker v. Hedgecock*, *ubi sup.*; *Davies v. Davies*, *ubi sup.*; *Rogers v. Maddocks*, *ubi sup.* A covenant not to carry on business “under a particular style or name,” is sufficiently limited: *Vernon v. Hallam*, *ubi sup.* The expression, “so far as the law allows,” does not validate a covenant otherwise too wide: *Davies v. Davies*, *ubi sup.* As to joint and several interests of two partners in an assistant’s bond, see *Palmer v. Mallet*, 36 Ch. D. 411. As to the effect upon such a covenant (by an *employé*) of a sale of the business, see *Showell v. Winkup*, 60 L. T. 389. As to what constitutes a breach of covenant against carrying on a particular business, see *Stuart v. Diplock*, 43 Ch. Div. 343; *Mits v. Ples*, [1893] 1 Ch. 77. As to the above questions generally, see note to *Mitchel v. Reynolds*, 1 Sm. L. C. 430, and the tabular statements of decisions in the note to *Avery v. Langford*, Kay, 667, continued in Pollock on Contracts, p. 316. As to the effect of the wife of the covenantor carrying on the business, see *Smith v. Hancock*, [1894] 2 Ch. 377.

the traveller), 2. WHY IT IS MUTUALLY AGRD as follows :—

1. THE traveller shl enter into the service of the employer as traveller for him in the business of a — manufacturer, carried on by him at — a/sd, for the period of — yrs from the — day of — 18—, (a) subjt to the genl control of the employer.

Engage-
ment as
traveller
for a term.

2. THE traveller shl devote the whole of his time, attention, & energies to the pformce of his duties as such traveller, & shl not, eir directly or indirectly, alone or in ptnp, be connected with or concerned in any other business or pursuit whatsr, durg the sd term of — yrs.

Traveller
to devote
whole time.

3. THE traveller shl, subjt to the control of the employer, keep pper books of acct, & make due & correct entries of the price of all goods sold, & of all transons & dealgs of & in relon to the sd business, & shl serve the employer diligently & accdg to his best abilities in all respts.

To keep
accounts.

4. THE fixed salary of the traveller shl be the sum of £— per week for the first yr, payable by the employer weekly from the commencemt of the sd service on the — day of —, & on every succeedg Saturday, & £— per week for the second yr, & £— per week for the third yr, payable weekly in like mner, from the commencemt of such respive yrs.

Salary.

[5. THE traveller shl also be pd in addon to such fixed salary a commission at the rate of £— p.c. upon the entire business returns of the employer in London & the suburbs, incldg thrin a circuit of — miles' radius measured from the General Post Office, St. Martin's-le-Grand.]

Commis-
sion.

[6. THE amt payable to the traveller in respt of his commis- sion shl be ascertained & pd to him by qtrly paymts, at the end of each period of three calr months from the commencemt of the sd service, & in the event of the death of eir of the sd pties the sd commission sh be computed & pd up to the day of such death.]

Payment of
commis-
sion.

7. THE reasble travellg expses & hotel bills of the traveller incurred in connon with the business of the employer shl be pd by the employer [borne by the sd pties in eql moieties], &

Travelling
expenses.

(a) The engagement of the traveller for a fixed term does not imply an agreement that the business itself shall continue for that term (*Rhodes v. Forwood*, 1 App. Ca. 256).

the employer shl from week to week pay to the traveller [one half of] the sd travellg expses & hotel bills in addon to his fixed salary. The employer shl provide a horse & carriage for the use of the traveller, & in the event of any damage thto, the loss shl be borne by the pties hto eqly.

Partner-
ship at
the end
of term.

[8. At the expiron of the sd period of — yrs, the employer shl take the traveller into ptnp with him in his sd business, for the term of — yrs from such expiron if both pties shl so long live, & give him one eql fourth share of the net gains & profits of the sd business for the succeedg period of — yrs, & one eql third share thof after that term, the employer providg the requisite capital for carryg on the sd business, & a pper deed of ptnp shl be entd into betn the sd pties, any question as to the terms whof shl be settled by arbitron under the clause hinafter contd.]

Arbitra-
tion.

[9. *Arbitron clause.* See ARBITRON.] IN WITS, &c.

XI.

AGREEMENT *under SEAL between a FIRM of TRADERS and an AGENT for the SALE of GOODS, PROVISIONS for PAYMENT of COMMISSION, for determining AGENCY, and for restraining AGENT from carrying on a similar BUSINESS, and other CLAUSES. A FULL form (a).*

Parties.

THIS INDRE made the — day of — betn A., *agent* (hinafter called the agent) of the one pt, & B., C., & D., *ppals*, carryg on business in ptnp togr as —, under the style or firm of B. & Co., at, &c., or, “& Messrs. B. & Co., &c.”

Recital.

(hinafter called the ppals), of the other pt. WHAS the agent has agrd to become the agent of the ppals in London for the sale of — manufactured or supplied by them upon the terms & in mner hinafter mentd: NOW THIS INDRE WITNETH, that it is hby covtd & agrd by & betn the sd pties hto as follows :

Mutual
covenants.

(a) As to agreements of this nature, see the Factors Act, 1889 (52 & 53 Vict. c. 45); Goodeve P. P., p. 79.

1. THE ppals shl, from time to time durg the term of ——— Firm to supply goods.
yrs from the day of the date hrof (if the agent shl so long live),
[ship], consign, & supply at their own costs & chges to the
agent with as little delay as may be after they shl have reced
from him a notice or order in writg for the same (unless they
shl be prevented by some just and sufft cause), such quantities
& descriptions of ——— or other goods or merchandise wch are
now, or shl for the time being be manufactured or dealt in by
the ppals, as the agent shl require, or, “as will keep up a stk
in the hands of the agent to the value of £——.”

2. THE agent shl, durg the term afsd, rece all such goods To be dis-
& merchandise as shl be consigned or supplied to him by the posed of
ppals as afsd, & shl use his best endeavours to sell & dispose by agent.
of the same to the best advantage, & for the best prices that
can be obtained for the same, not being less than such prices,
if any, as may from time to time be fixed by the ppals, & eir
for ready moy or to psons of good credit: AND shl in the
meantime keep the same deposited in warehouses or other
pper places, & shl twice in every yr, as hinafter mentd, duly
acct with the ppals for, & pay over or remit to them all moys, Proceeds to
bills, notes, & secs, wch shl have been reced by, or come to the be remitted
hands of the agent, from or in respt of the sale or disposon half-yearly.
of the sd goods or merchandise, after deductg the expses &
allowces & other dedons hinafter mentd.

[3. IN case the ppals shl at any time durg the subsistce of Provision
this agrmt from any cause whatever, fail or omit to supply for omis-
the agent with such goods or merchandise as afsd within ——— sion to sup-
weeks after receivg a notice or order in writg from him for the ply goods.
same, the agent may thrupon pchase or obtain from any other
pson or psons such goods or merchandise as he shl require, &
wch the ppals shl so have failed to supply: Provd that the
agent shl duly acct, at the times & in mner hinafter provd, for
all the net profits to arise from the sale thof, after deductg the
first cost or price of the same, & expses, & such other dedons
& allowces as hinafter mentd.]

4. THE ppals shl allow or pay to the agent so long as he Expenses.
shl continue to be their agent under this agrmt, all reasble
expses for carriage or delivery of the sd goods or merchandise,
& for books, stationery, & postage, and all other reasble &
customary expses attendg the sale thof, or orwise incurred by

Commis-
sion.

him in respect of the premes [save as hrin orwise provd]: AND shl also allow or pay him a commission or salary at the rate of £—— p.c. upon the [net] proceeds wch shl arise from the sale of all such goods or merchandise as afsd [after deductg expses], such commission to be chgeable upon moys actually reced only, & not upon outstandg debts: [AND in case such commission shl, upon the makg up of any half-yrly acct as hinafter mentd, be found to amt to a less sum than £—— for the precedg half-yr, then the agent shl be entled to retain or be paid such a further sum in addon to the sd commission as will make the same up to such sum of £——]: AND it is hby agrd that the commission and allowce afsd, & all sums of moy whatsr wch may from time to time be or become due or owg from the ppals to the agent, shl be a lien or charge (a) upon all goods, merchandise, & ppty of the ppals, wch shl, for the time being, be in the posson or custody of the agent.

Lien.

Clerks.

5. THE agent shl, out of his sd salary or allowce, provide & pay all clerks & assistants who may be required by him for the managemt of the sd agency business.

Accounts.

6. THE agent shl keep all usual & pper books of acct of & concerng all goods & merchandise reced by him from the ppals, [or pchased or obtained by him from any other pson or psons under clause 3], & the parlars of the sales thof, and of all sums of moy, bills of exchange, & other secs reced by him, & of all credit given on acct of any such goods, & of all other mres & transons concerng the premes, & the sd books & accts, & all bills, notes, secs for moy, lres, & other writgs relatg to the mres afsd in the posson or under the control of the agent, shl be carefully preserved by him (damage by fire, or other inevitable accident only excepted) & shl at all reasble times be open to the inspon of the ppals, or any member of their firm, or their agents, who shl have full liberty to make copies or extracts of or from the same or any of them.

Inspection.

Settle-
ment of
accounts.

7. THE sd pties shl, on the —— day of —— next, & thrafter durg the continue of this agrmt, on the —— day of —— & the —— day of —— in every yr (unless prevented by sickness or other unavoidable cause, & then as soon as may be

(a) That this will not make the document a bill of sale within the Act of 1882, see *Morris v. Delobbel-Flipo*, [1892] 2 Ch. 352. See as to bills of sale the note in Vol. II., MORTGAGES; Goodeve P. P., p. 97.

after the removal of such cause), settle accts resptg the sale & disposon of the sd goods & the other mres afsd. [AND upon the settlemt of accts, intt at the rate of £—— p.c. p.a. may be chgd by or agst the agent upon all unpd balces, & for the ppose of such half-yrly settlemt of accts a full & parlar statemt in writg shl previously to every such day as afsd be prepared by the agent shewg all rects & paymts & other dealgs & transons concerng the premes, & every such accts or statemt, when approved & signed by the sd pties, shl be bindg upon them & every of them, & shl not aftwds be opened unless some manifest error or omission shl be discovered thrin within the space of twelve calr months thrafter, in wch case the same shl be rectified.]

8. THE agent shl on the first day of every month transmit to the ppals a statemt in writg of the goods wch may have come to his hands & of all orders reced by him, & the parlars of all sales & other transons wch shl have taken place durg the precedg month. Monthly statements.

9. THE agent shl accept & duly pay all such bills of exchange as may be drawn upon him by the ppals, to the amt of the balce he may have in hand, on havg three days' previous notice given to him thof. Agent to accept bills.

10. THE agent shl not at any time witht the consent in writg of the ppals assn, transfer, or in any mner make over the sd agency or this psnt contract to any pson or psons whomsr: AND the agent, his clerks, agents, & servants, shl not, nor shl any of them, durg the continue of the sd agency, witht such consent as last afsd, directly or indirectly, sell or dispose of any —— or other goods or merchandise of the description afsd, for or on acct of the agent or any pson or psons whomsr, other than the ppals. THE agent, his clerks, agents, & servants, shl not, nor shl any of them, durg the continue of the sd agency, witht such consent as afsd, directly or indirectly, buy, sell, or deal in ——, or any of the goods or articles wch are now or shl for the time being be usually dealt in by the ppals, or carry on the business or trade of, &c., [carry on any business or trade whatsr,] for or on acct of the agent or any other pson or psons whomsr, other than the ppals [but the agent shl devote his whole time & attention to Agency not to be assigned.
Agent not to carry on other business of the same kind (b).
Or, any other business.

(b) See ante, p. 30, note (g).

- Principals not to employ any other agent in same place. the sd agency business]: AND the ppals, their clerks, servants, & agents, shl not, nor shl any of them, durg the period afsd, witht the consent in writg of the agent, supply any such goods or merchandise as afsd, whether for resale or orwise, to any pson or psons whomsr, who shl reside or carry on business in the town of — afsd, or within the distce of — miles from, *some public bldg or other place in the town*, other than the agent.
- Limit as to credit to be given. 11. THE agent shl not give credit to any pson or psons whomsr for a longer period than —, nor for any goods or merchandise exceedg the value of £—, witht the consent in writg of the ppals, & shall not give credit for any goods or merchandise to any pson or psons to whom they shl have forbidden him to give credit.
- Not to pledge. 12. THE agent shl not witht the consent in writg of the ppals pledge any goods or merchandise consigned or supplied to him as afsd.
- Agent not to compound debts, &c. 13. THE agent shl not, witht the consent of the ppals, rele or compound any debt, claim, obligon, or secy relatg to the premes, nor abandon or compromise any action, suit, or other pcdg for compellg the paymt or satisfon of any such debt, claim, or obligon, or realisg or enforeg any such secy as afsd, nor exte nor do any instrumt or thing whby any such debt, claim, secy, or obligon may or might be dischgd, diminished in value, or prejudicially affected, until the same shl have been fully pd or satisfied.
- To obey directions of principals. 14. THE agent shl at all times durg the continue of the sd agency obey & observe all reasble dirons & instrons wch may be given to him by the ppals, touchg the sale or disposon of the sd goods, or orwise relatg to the premes, & in the absce of special instrons shl act in such mner as he shl deem most beneficial to them.
- To deliver up goods, &c., on winding up of agency. 15. THE agent shl, upon the final windg up of the sd agency business, deliver up to the ppals all such of the goods & merchandise afsd, as shl remain unsold, & also all books & accts wch shl have been kept by the agent as afsd, & all documts & writgs relatg to the mres afsd, wch shl be in his posson or power.
- Power to terminate agency. 16. It shl be lful for eir the ppals, or the agent, at any time durg the sd term of — yrs to terminate the sd agency (a) by

(a) See other provisions for determining agreements, *ante*, Precedents V. and VII.

giving ——— calr months' notice in writg to the other pty, or leavg such notice at, or sending the same by post or orwise to the usual or last known place of abode or business of such pty addressed to him or them : [Provd that in case eir of the sd pties shl at any time wilfully neglect or refuse to observe or pform any of the agrmts or stipulons afsd it shl be lful for the other pty to terminate the sd agency upon givg one week's notice in writg to him or them, or leavg or sendg the same as afsd.] AND any notice hrnbfe required to be given to the ppals may be addressed to the sd firm by its then name or style, or to any member thof, & upon the expiron of the period of any such notice as afsd, the sd agency shl accdly absolutely cease, & the accts of the sd business shl thrupon be adjusted & settled betn the sd pties up to the day on wch such notice shl have expired, in the same mner as if the sd agency had expired by lapse of time.

17. THE agent shl in nowise be ansble for any loss or damage wch may happen to any such goods or merchandise as afsd, or wch may orwise be incurred in or about the mres afsd, unless the same shl be occasioned by his wilful neglect or default.

Agent not to be answerable for loss.

18. THIS agrmt shl not be affected {by any change wch may take place in the firm of the ppals by the death or retiremt of any member or members thof, or the admission of any new member or members, or any alteron in the name or style of the sd firm or orwise, so long as the sd psnt members thof, or any of them, shl continue ptners or a ptner thrin.

Agreement not to be affected by change in firm.

19. FOR further effectuatg this agrmt, the ppals do hby appt the agent to be the atty of the ppals & of the psons or pson for the time being constitutg their firm or carryg on the sd business, for them or him, & in their or his names or name to demand, sue for, recover, & rece, & give effectual rects & dischges for all such sum or sums of moy as shl be due from any pson or psons in ——— or elsewhere, for or on acct of any goods or merchandise sold by the agent as afsd, & genlly to do all such acts, & things as may be necy or pper in relon to the mres afsd (but subjt nevs to the stipulons & agmts

Power of attorney to agent (a).

(b) See, also, ATTORNEY, POWERS OF.

hinbfe contd as to compromisg claims & orwise), with power to the agent to appt a substitute or substitutes under him for any of the pposes last afsd, or for any mres relatg to the sd agency business, with such powers as he shl think fit, & such apptmt at pleasure to revoke, & the ppals hby agree to ratify & confirm whatsr the agent or his substitute or substitutes shl lfully do or cause to be done in & about the premes.

Arbitra-
tion.

20. In case any question or dispute shl at any time durg the continue of the sd agency or aftwds arise btwn the agent, his exs or ads & the ppals or their firm for the time being, with respt, &c., — *Arbitron clause. See ARBITRON. IN WITS, &c.*

XII.

GUARANTEE to BANKERS (a). VARIATIONS where the PRINCIPAL DEBTORS are a FIRM.

To MESSRS. —.

Guarantee.

IN conson of your [openg an acct with &] makg advces or orwise givg credit (b) to A., of, &c., [& B., of, &c., carryg on

As to law
of guaran-
tee and
suretyship.

(a) See also the form of a bond to secure a banking account, *infra*, BONDS. As to the effect of the guarantor's death, see *Harris v. Fawcett*, 15 Eq. 311, 8 Ch. 866; *Lloyd's v. Harper*, 16 Ch. D. 299; *Re Silvester*, [1895] 1 Ch. 573. As to the appropriation of payments made by the debtor after the death of the guarantor, see *Re Sherry*, 25 Ch. D. 692. As to the right to contribution between co-sureties, see *Exp. Snowden*, 17 Ch. D. 44; *Re Parker*, [1894] 3 Ch. 400; *Wolmerhausen v. Gullich*, [1893] 2 Ch. 514. As to the difference between joint and several guarantees as regards the right to contribution between the guarantors, and the effect of the release of one of them by the creditor, see *Ward v. National Bank of New Zealand*, 8 App. Cas. 755. As to the difference between guarantee and indemnity, see *Guild v. Conrad*, [1894] 2 Q. B. 885. On the law of guarantees and suretyship, see notes to *Rees v. Berrington*, and *Dering v. Winchelsea*, in W. & T. L. C. Eq.; Goodeve P. P., 176 *et seq.*

As to
stating
considera-
tion.

(b) The importance of correctly stating the consideration (one of many instances of the strictness with which suretyship agreements are construed in favour of the surety), is illustrated by *Burton v. Gray*, 8 Ch. 932, where a guarantee expressed to be given in consideration of the bankers' lending the principal debtor £1,000 for seven days, was held to fail by reason of this condition not having been strictly fulfilled, although the debtor had within the seven days been allowed to overdraw his account to an amount approaching £1,000. If the consideration is the forbearance of the creditor to sue, this will be good if time is in fact given, although there is no express contract to do so; *Crears v. Hunter*, 19 Q. B. D. 341.

business at, &c., under the style or firm of A. & Co] I hereby guarantee to you the payment of all moneys which [are now (c) or] shall at any time be due to you from the said A. or his representatives [A. & Co] on the general balance of his [their] account with you not exceeding £—— with interest thereon at the rate of —— per cent. per annum from the time of notice requiring payment of the amount hereby guaranteed being given as hereinafter provided (d): AND I declare that this guarantee shall be a continuing guarantee (e) to the extent at any time of £——, & shall not be considered as wholly or partially satisfied by the payment or liquidation at any time or times hereafter of any sum or sums of money for the time being due upon such general balance as aforesaid, but shall extend to cover & be a security for all future sum & sums of money at any time due to you thereon within the limit aforesaid, notwithstanding any such payment or liquidation: AND

to be continuing.

Power to

(c) See *Morrell v. Cowan*, 7 Ch. D. 151.

(d) See *Hobson v. Bass*, 6 Ch. 792; *Ellis v. Emmanuel*, 1 Ex. D. 157. The following is a full form, which may be substituted, *mutatis mutandis*, for the clause in the text to this point:—

“In consonance, &c., I, the undersigned B., of, &c., hereby guarantee to you the payment of all moneys which are now or shall from time to time be due to you from the said A. or his representatives, alone, or jointly with any other person or persons, or Co, either on account current or for money advanced or paid, or in respect of bills, drafts, notes, or other negotiable securities made, drawn, accepted, advised, endorsed or paid by you or on your account for the said A. or his representatives alone or jointly as aforesaid, & also of all moneys which you may from time to time be or become liable to pay in respect of any bills, letters of credit, circular notes, or any other dealings or transactions on account or for the accommodation or benefit of the said A. or his representatives, alone or jointly as aforesaid, inclusive of interest, commission, & other usual bankers' charges, & all costs & expenses incurred by you in respect of the premises, or this guarantee, & inclusive also of interest at any rate not exceeding (unless otherwise agreed) the Bank of England rate for the time being, or five per cent. per annum if the Bank rate shall be below that rate, to be calculated with half-yearly rests, according to the usual custom of bankers, although the relation of customer & banker may have ceased, so as the liability of me or my representatives hereunder shall not exceed at any one time the sum of £——, with interest, &c., as in the text.

Full form of guarantee.

(e) See *Ellis v. Emmanuel*, 1 Ex. D. 157.

give time
and com-
pound.

Death of
guarantor
or change
in partners
not to
invalidate
guarantee
(b).

Account
settled
between
customer
and bank
to be
binding.

Amount
guaranteed
to be due
on notice.

I further declare that you may grant time or other indulgence to or compound with the sd A. or his repves [A. & Co], or any person or persons or Co liable on any bill, note, or other security or guarantee held by you without affecting this guarantee, & that all dividends, compositions, & payments received by you from the sd A. [A. & Co], or any other person or persons or Co so liable, or his or their estate, shall be taken & applied as payments in gross, without any right on the part of me or my repves to stand in your place in respect of, or to claim the benefit of any such dividends, compositions, or payments, or any security held by you until you shall have received the full amount of all your claims against the sd A. or his repves [A. & Co] which are covered by this guarantee, & that this guarantee shall apply to & secure any ultimate balance which shall remain due to you within the limit aforesaid, & that you may enforce this guarantee, notwithstanding that any bills or other instruments covered by it may be then in circulation or outstanding (a) : AND I further declare that this guarantee shall not be affected by my death, but shall remain in force until one calendar month after notice in writing to determine or discontinue the same shall have been given to you by me or my repves, & shall continue to be binding, notwithstanding any changes which may from time to time take place in the partners [in the sd firm of A. & Co or] in your firm : AND I further agree that any account settled or stated by or between you & the sd A. or his repves [A. & Co], or admitted by [him or] them, may be adduced by you & received as conclusive evidence against me & my repves of the balance or amount thereby appearing due from the sd A. or his repves [A. & Co] to you, & shall not be disputed or questioned by me or my repves. AND I further agree that the amount hereby guaranteed shall be due & payable to you at the expiration of — days after notice requiring such payment shall have been delivered or sent through the post by registered letter in the usual way by you or your solers to me or my repves without the necessity of naming them. As witness my hand this — day of —.

(a) See as to this clause, *Midland Banking Company v. Chambers*, 7 Eq. 179, 4 Ch. 398; *Hobson v. Bass*, 6 Ch. 792; and as to companies, see *Gray v. Seckham*, 7 Ch. 680; *Exp. National Provincial Bank*, 17 Ch. D. 98.

(b) In the absence of agreement to the contrary, the guarantee would be revoked as to any future transactions by a change in the constitution of the firm of A. & Co., or of the firm of bankers; Partnership Act, 1890 (53 & 54 Vict. c. 39), s. 18.

XIII.

GUARANTEE *by DIRECTORS of a COMPANY to BANKERS*
for limited amounts (c).

TO THE ——— BANK LIMD.

IN CONSON of your agreeing to grant to the X. Co Limd., at our request, a credit overdraft to the extent of £——, we, the undersigned, hereby guarantee to you the payment of all moneys which shall at any time be due from the said X. Co to you on the general balance of their account with you (such balance to include all interest, commission, & other charges & expenses which you may in the course of your business as bankers charge in respect of any advances or discounts made to them or on their account, or for keeping their said account, with you), & we hereby agree that this guarantee shall be a continuing guarantee to the extent at any one time or times hereafter of any sum or sums of money for the time being due upon such general balance as aforesaid: AND further that this guarantee shall be in force & subsisting whether the whole of the said sum of £—— shall be actually advanced by you or not (d). *Power to give time, &c., as in last form.* PROVIDED always & we expressly stipulate that we shall respectively be liable on this guarantee only to the extent of the sums set opposite to our respective names in the schedule hereunto: AND further that if, during the continuance of this guarantee, any of us shall die or shall cease to be a Director or Directors of the said X. Co Limited, & if that Co shall be unable to substitute a guarantor or guarantors in his or their place who shall be satisfactory to you, then the said Co may pay to you the amount which in the said schedule shall be set opposite to the name or names of the person or persons who shall so die or cease to be a Director or Directors as aforesaid, & such payment shall be accepted by you in full satisfaction of all claims against such person or persons in respect of this guarantee. Dated, &c.

Guarantee.

Limit of liability (e).

Provision for death, &c., of any guarantor.

The Schedule.

- A. £——,
- B. £——, &c.

(c) See notes to the last Precedent.
(d) See *Burton v. Gray*, 8 Ch. 932.
(e) *Ellesmere Brewery Co. v. Cooper*, [1896] 1 Q. B. 75.

XIV.

AGREEMENT *between* DIRECTORS *of a* COMPANY *in re-*
spect of a GUARANTEE *given by them for the* COMPANY (a).

Recital of
guarantee.

AGRMT made, &c., betn *six pties*: WHAS by a guarantee bearg even date hwith the sd sevl psons pties hto have guaranteed to the — Bank certn sums set opposite to their respive names in the schdle to the sd guarantee as secy for the X. Co, of wch the pties hto are the psnt Dirors: AND WHAS with a view to provide for the contingency of their ceasg to be Dirors of the sd X. Co, they have agrd betn themselves in mner hinafter appearg: NOW THESE PSNTS WITNESS, that each of the sd pties hto doth hby agree with the others of them jtly & sevlly as follows:—

Agreement

for release
of any
guarantor
dying or
ceasing to
be director.

1. If at any time durg the continue of the sd guarantee, any one or more of the pties hto shl die or shl (except by ceasg to hold the necy qualificon as Diror or in consequence of anything done or permitted by him or them contrary to his or their duty) cease to be a Diror or Dirors of the sd X. Co, then the other pties hto, or such of them as shl for the time being be Dirors of the sd X. Co, will forthwith procure the sd Bank to rele the sd pty or pties so dying or ceasg to be a Diror or Dirors, & his or their estes & effects, eir by procurg the sd Bank to accept a substitute or substitutes as guarantor or guarantors in his or their place, or by paymt to the sd Bank of the sum set opposite to the name or names of such pson or respive psons in the schdle to the sd guarantee: PROVD ALWAYS that the liability to procure such rele shl not arise until paymt to the sd X. Co shall have been made by the repves of the pson or psons so dying, or by the pson or psons so ceasg to be a Diror or Dirors of the amt for the time being uncalled or unpd upon the shares standg in the name or names of the respive pson or psons so dying or ceasg to be a Diror or Dirors, if the then existg Dirors of the sd X. Co shl require such paymt to be made. IN WITS, &c.

On pay-
ment up of
his shares.

(a) See last Precedent.

XV.

**AGREEMENT *between an AUTHOR and a PUBLISHER for
SALE of COPYRIGHT and PUBLICATION of a BOOK.***

PARTIES, A., author, 1. B., publisher, 2.

WHAS the sd A. has written a book to be entled — : NOW Sale of
copyright.
IT IS HBY MUTUALLY AGRD that the sd B. shl pchase
the copyright of the same on the follg terms:—

1. THE sd B. shl bear the whole expse & risk of the paper Expenses.
& printg the sd book, & the publicon thof.

2. THE sd B., his exs, ads, or assns, shl pay to the sd A. Payment to
author.
the sum of £—— for the first edon of the sd book, when ——
copies shl have been sold, & for the second & for every future
edon the sum of £—— to be pd three months after the day
of publicon, no edon to exceed —— copies & —— copies
of each edon to be supplied gratis to the author, and any
number of copies at trade price.

3. THE sd A. shl revise any new edon of the sd work, & New edi-
tions.
correct the proofs.

4. IN case of the death of the sd A. or his inability to edit Provision
for death,
&c., of
author.
the sd work, the sd B., his exs, ads, or assns, shall be at
liberty to employ such editor as he or they may think fit, &
after deductg the paymts to such editor, the balce, if any, of
the sd sums of £——, or £——, as the case may be, shl be
pd to the sd A. or his repves.

5. IN case —— copies of the first edon of the sd book shl Power to
waste first
edition.
not be sold within —— yrs from the date of publicon, the sd
B. shl be at liberty to waste the same, & shl not be liable to
pay the afsd sum of £—— to the sd A. IN WITS, &c.

XVI.

AGREEMENT *between OWNERS and LESSEES of Two*
ADJOINING PROPERTIES respecting the interference of
NEW BUILDINGS with ANCIENT LIGHTS (a).

Recital of
A.'s title
to land
formerly
the site of
buildings.

B.'s title to
adjoining
land.

Agree-
ments as
to lights.

PARTIES, A. 1, B. 2, C. 3. *WHAS* the sd A. is seised in fee of a certain plot of land in & on the south side of X. court, in the parish of, &c., formerly the site of houses nod. &c., in X. court, but wch houses have lately been pulled down, and the sd A. is also tenant, under an agrmt for a lease for a term of — yrs from the — day of —, of anor plot of land in & on the south side of X. court afsd, formerly the site of houses nod. &c., in X. court afsd, wch houses have also lately been pulled down : *AND WHAS* the backs of the sd houses in

(a) Where access of light to a building has been enjoyed for twenty years without interruption, the right thereto becomes indefeasible, unless the enjoyment was pursuant to a contract in writing. See the Prescription Act, 2 & 3 Will. 4, c. 71, ss. 3 & 4; Shelford R. P. Stat. pp. 11 *et seq.*; Tudor L. C. Conv., notes to *Sury v. Pigot*, p. 154. As to the time when time begins to run in the case of an unfinished house, see *Collis v. Laughner*, [1894] 3 Ch. 659. Frequently a small nominal rent is agreed to be paid for permission to continue an encroachment with the object of preventing an easement from being acquired. The payment of rent under a *parol* agreement of this nature is not an interruption of the user under s. 3 of the above Act (*Plasterers' Co. v. Parish Clerks' Co.*, 6 Ex. 630), and where there is an agreement in writing for payment of the rent, the non-payment of the rent for twenty years may afford some evidence that the agreement has been put an end to (per James and Thesiger, L.JJ., *Bewley v. Atkinson*, 13 Ch. D. 293, 296); but the payment of a rent by way of acknowledgment, though not essential, is useful as a means of ensuring that the tenant for the time being in possession shall have notice that the enjoyment of the easement is permissive only; for which purpose the demand of payment should be regularly made on the person in actual occupation. Where either property is in lease, the lessor is sometimes made a party to the agreement; if this is not done, notice of it should be given to him; and in general it is desirable that notice should be endorsed on the lease, and on one or more of the leading title-deeds of both tenements. As to constructive notice of an agreement granting an easement, see *Allen v. Seckham*, 11 Ch. D. 790. As to the effect of rebuilding on the same or an altered site as regards the right to ancient lights, see *Heath v. Bucknall*, 8 Eq. 1; *Staight v. Burn*, 5 Ch. 163; *Aynsley v. Glover*, 18 Eq. 544; *National, &c., Co. v. Prudential Assurance Co.*, 6 Ch. D. 757; *Ecclesiastical Commissioners v. Kino*, 14 Ch. D. 213; *Newson v. Pender*, 27 Ch. D. 43; *Bullers v. Dickinson*, 29 Ch. D. 155; *Greenwood v. Hornsey*, 33 Ch. D. 471; *Pendarves v. Monro*, [1892] 1 Ch. 611; 29 Sol. J. 62. As to the effect of a verbal agreement to grant an easement where there has been part performance, see *McManus v. Cooke*, 35 Ch. D. 681.

X. court abut on the backs of other houses situate on the north side of Y. street, in the sd parish of — (the two pptyes being divided by a divon or pty fence wall), wch houses in Y. street, with other ppty, are held by the sd B. (upon certain trusts under wch the sd C. is absolutely entled to the beneficial intt thrin), under a lease for the residue of a term of — yrs commencg on the — day of —, & are underlet ptly upon lease & ptly to yrly tenants: AND WHAS the sd A. has pulled down the sd houses on the south side of X. court, with the view of erectg on the site thof other bldgs of greater height & magnitude, & he intends to cover over or ptly to cover over the site of the back yards of the sd houses so that (as alleged by the sd B., though not admitted by the sd A.), the ancient lights of the sd houses in Y. street wd be interfered with, & the free access of light & air thto (as htofore) wd be materially obstructed: AND WHAS plans and elevons of the houses so pulled down by the said A. & of the new bldgs & improvemts so as afsd to be erected & extd by the sd A. have been submitted to Mr. — the surveyor of the sd B., & signed by such surveyor & by Mr. — the architect of the sd A., & annexed to this agrmt, & the plans & elevons of the sd new bldgs & improvemts so signed are hinafter for brevity referred to as “the sd plans”: AND WHAS for obviatg applicon by the sd B. for restraining the sd A. from pedg with the sd proposed bldgs & improvemts, & for fixg the terms on wch the consent of the sd B. to the exon thof is intd to be given, the sd pties hto have entd into the arrangemt hinafter appearg: NOW in conson of the premes the sd A. & the sd B., with the consent hby testified of the sd C., HBY MUTUALLY AGREE as follows:

Proposed
new build-
ings by A.

Plans
agreed
upon.

Intro-
ductory
recital.

1. THE sd A. shl not, by reason of the eron & exon of the proposed bldgs & improvemts, acquire as agst the sd B. or the psons claimg under him (b) any further or more extensive rt to the access & use of light to & for such bldgs than he, the sd A., is entled to in respt of the sd houses & bldgs lately standg on the south side of X. court afsd, & any access or use of light to or for the sd proposed new bldgs more extensive than that

A. not to
acquire any
more exten-
sive right
to light in
respect of
new build-
ings.

(b) If the property is settled and B. does not take the legal fee, substitute in this and other places for “claimg under him,” the words “under the settlor deced.”

wch was enjoyed as of right to or for the sd houses & bldgs lately standg on the south side of X. court afd, shl so far as regards the sd B. & the psons claimg under him be deemed permissive & enjoyed by consent under this agreemt, so as to prevent the sd A. or the psons claimg under him from havg any legal or equitable rt, claim, or remedy agst the sd B. or the psons claimg under him, in respt of any obstron or detrimt to such addonal access or use of light, occasioned by any bldgs or improvemts upon, or other reasble use of the sd houses or any adjacent ppty of the sd B.

A. to permit erection of similar buildings on adjoining land.

2. THE sd A. & the psons claimg under him will not, in respt or under colour of his psnt or any future rts to the access or user of light or air, by any means seek to restrain or prevent the sd B. or the psons claimg under him from doing or causg to be done, or bring any action for damages or institute or promote any other legal pcdgs in respt of his or their doing or causg to be done any of the things follg, & the sd A. (so far as depends upon him), hby authorises & consents to, & agrees that the psons claimg under him shl authorise & consent to the doing of the same, that is to say:—*First*, erectg on the site of the sd houses in Y. street, or any pt thof (not being within a distce of ——— feet from the boundary wall of the two ppties), any bldgs not exceedg in height the bldgs proposed to be erected by the sd A. as shown on the sd plans. *Secondly*, coverg over & alterg the psnt back yard, sheds, & offices of the houses in Y. street, or the sites thof, or any pt thof, up to the sd boundary wall in the way in wch the back yards of the houses in X. court are intd to be covered over & altered as shown in the sd plans, or in any other way not more prejudicial, as regards the access of light & air, to the X. court ppty of the sd A.

Consent by B. to new buildings.

3. IN conson of the sd agrmts on the pt of the sd A. the sd B. & the psons claimg under him will not by any means seek to restrain or prevent the sd A. or the psons claimg under him from erectg and extg the sd proposed bldgs and improvemts accdg to the sd plans, or bring any action for damages, or institute or promote any legal pcdgs in respt thof, but so far as depends on him he, the sd B., hby authorises & consents to the eron & exon of the sd proposed bldgs & improvemts accdg to the sd plans.

4. THE sd A. & the psons claimg under him will, by insertg notice of the stipulons hinfte contd in favour of the sd B. & the psons claimg under him, in leases and other munimts, & by such other reasble means as circes may require or admit (& as well in complice with any special reqt in that behalf on the pt of the sd B. or the psons claimg under him as witht such special reqt), use his best endeavours to cause the sd stipulons to run with the sd X. court ppty, & bind all psons interested thrin as owners, lessees, occupiers, or orwise. In WITS, &c.

A. to give notice of agreement to persons claiming under him.

XVII.

AGREEMENT for PREVENTING the acquisition of an EASEMENT in respect of NEW WINDOWS overlooking a neighbour's land (a). VARIATION where one of the PARTIES is only a LESSEE.

PARTIES, A., one owner, 1. B., other owner, 2. WHAS the sd A. is seised in fee simple of the house No. — in — street,

Recital of title. Variation

(a) See note to last Precedent. The following clauses are adapted to the case of one of the parties being only a lessee:—*Recite that A.* "is seised in fee simple of a pce of bldg ground situate, &c.," *and that B.* "is lessee for an unexpired term of — yrs of an adjoining pce of ground on wch he has erected a house & other bldgs known as, &c., the windows whof overlook the sd ppty of the sd A.," & *that* "the sd A. has threatened to obstruct the access of light and air to the sd house & bldgs of the sd B. through or by means of the windows afsd. NOW in order to avoid any disputes IT IS HBY MUTUALLY DECLD AND AGRD betn the pties hto as follows:—

Recitals. Lease to B.

1. THE sd B. (so as to bind himself & his exs & ads, & his & their intt as lessees & the intt of all psons claimg through or under him or them by assnmt, underlease or orwise, but not so as to prejudice his or their lessors or to work a forfeiture of the sd lease), doth hby for himself & his exs, ads, & assns acknowe that the access of light & air to the sd house & bldgs through or by means of the windows afsd is had & enjoyed by him solely by the permission & sufferce of the sd A., & so that

Enjoyment of light and air to windows to be deemed permissive.

New
windows
opened
by A.

in the parish of, &c., & the sd B. is seised in fee simple of the house No. — in the same street; AND WHAS the sd A. has recently opened two new windows in his sd house overlookg the back yard of the sd house of the sd B.: NOW it is HBY MUTUALLY DECLD AND AGRD as follows:—

Enjoyment
of light to
window to
be deemed
permissive.

1. THE sd windows shl be deemed to have been opened with the express permission & consent of the sd B., & the enjoymt hrafter by the sd A., his hrs & assns, or any pson or psons claimg under him or them, of the access & use of light or air to the sd house & premes belongg to him the sd A., by means of such windows, shl be deemed to be with the express permission & consent of the sd B., his hrs & assns, to the intent that the sd A., his hrs & assns or any pson or psons claimg as afsd, shl not acquire any easemt or rt in respt thof.

Covenant to
pay nomi-
nal rent as
acknow-
ledgment.

[2. THE sd A., his hrs & assns, shl pay to the sd B., his hrs & assns, by way of acknmt for the permission hby given to keep open the sd windows so long as this agrmt shl continue the yrly rent or sum of one shillg on the — day of — in every yr if demanded.]

Rescission.

3. EITHER of them the sd A. & B., or his hrs or assns, may at any time hrafter determine this agrmt by givg to the other of them, his hrs or assns, a notice in writg in that behalf. Such notice shl be sufft if given to the owner or occupier, or one of the owners or occupiers of the sd house and premes now belongg to the other of them, the sd A. & B. (not being a mere caretaker or servant), or to some pson claimg to be such owner or occupier, or one of such owners or occupiers, psonally, or if sent by post addressed to the owner or occupier of such last mentd premes, or some one of such owners or occupiers eir by

no easemt or right in respt thof shl be acquired by prescription or orwise by him the sd B. his exs, ads or assns.

Lease not
to be as-
signed, &c.,
without
notice.

2. THE sd B., his exs, ads, & assns, shl not assn or underlet the sd house & premes or allow his or their leasehold intt thrin to expire or cease by surrender, forfeiture or orwise witht givg written notice thof to the sd A., his hrs or assns.

Access of
light and
air not to
be inter-
rupted
without
notice.

3. THE sd A., his hrs & assns, shl not obstruct or intercept the access of light & air to the sd house & bldgs of the sd B. witht givg three calr months' notice of his or their intention in that behalf to the pson in posson thof.

name or orwise, & provd in the latter case the rect thof shl be acknowledged by such owner or occupier, or by some pson claiming to be such.

4. IN the event of this agrmt being determined as afsd, the sd A., his hrs or assns, shl forthwith at his or their own expse wall or block up the sd windows. IN WITS, &c. A. then to wall up windows.

XVIII.

AGREEMENT *between* ADJOINING HOUSE-OWNERS *as to* *the* CONTINUANCE of ENCROACHMENTS (a).

PARTIES, A., owner of one house, 1. B., owner of other house, 2.

WHAS the sd A. is the owner of a house situate, &c., & the sd B. is the owner of a pce of land adjoining thto, on wch he has erected [is erectg] a house, the upper pt of the south wall of wch encroaches on the roof of the house of the sd A.; And the sd B. has affixed to the front of the sd house of the sd A. a pipe to carry off the water from the roof of his sd house: NOW it is MUTUALLY AGRD as follows:— Recital as to encroachments by B.

1. THE sd encroachmts of the sd south wall of the house of the sd B. & of the sd pipe shl be deemed to have been made, & the continue hrafter of such respive encroachmts shl be deemed to be with the express licence & consent of the sd A., to the intent that the sd B. or any pson claiming under him, shl not acquire any easemt or right in respt thof. Encroachments to be deemed permissive.

2. THE sd B. shl at his own expse keep the sd pipe pperly cleansed & in good order, & shl make good, & compensate the sd A. for all damage wch may at any time be done to the house of the sd A. by water runng from the roof of the house of the sd B., or by leakage or overflow from the sd pipe. B. to repair and make good future damage.

3. THE sd B. shl pull down & remove the sd wall & pipe so far as the same respily encroach as afsd, & make good any damage occasioned thby to the house of the sd A., within 14 days after the sd A. shl have given or left at the sd house To remove encroachments on notice.

(a) As to agreements of this nature, see 2 & 3 Will. 4, c. 71, s. 2, and above, p. 46, note (a).

of the sd B. a notice in writg in that behalf, & every such notice shl be sufft although not addressed to any pson by name or description.

Agreement
to bind
owners for
time being.

Notice to
be endorsed
on title-
deeds.

4. THE respive owners for the time being of the sd houses shl have the benefit of & be bound by this agrmt, & shl be deemed to be included in each article of this agrmt wherever the names of the sd A. & B. respily occur: And notice of this agrmt shl be endorsed on the convce to the sd B. of his sd pce of land, & on every future assurse of the sd house thron erected. IN WITS, &c.

XIX.

AGREEMENT *for* APPORTIONMENT *of* RENT *under* LEASE,
where the REVERSION *of* PART *of the* PREMISES *has been*
sold to a PUBLIC UNDERTAKING *under the* LANDS
CLAUSES ACT, 1845 (a).

PARTIES, A., lessor, 1. B., *a Public Board*, pchasers, 2.
C., lessee, 3.

Apportion-
ment of
rents.

(a) See the Act 8 & 9 Vict. c. 18, s. 119. Where the premises are conveyed by virtue of the Elementary Education Act, 1870 (38 & 34 Vict. c. 75), or the School Sites Acts, 1841 to 1851 (4 & 5 Vict. c. 38, 7 & 8 Vict. c. 37, 12 & 13 Vict. c. 49, 14 & 15 Vict. c. 24), the apportionment can be made under 12 & 13 Vict. c. 49, by agreement between the lessor or owner subject to the lease, the tenant, and the party to whom the conveyance is made, and when made is binding on all underlessees and other persons, whether parties to the agreement or not.

An apportionment of rent made on the severance either of the reversion or of the leasehold interest would not, unless concurred in by him, be binding, in the former case on the lessee, and in the latter on the lessor, who would otherwise be entitled to have it made by a jury or other competent authority (*Bliss v. Collins*, 5 B. & Ald. 876), but such concurrence is usually dispensed with, as an agreement come to between the owners of the severed portions of the reversion or of the leasehold interest (as the case may be) is generally acquiesced in.

Provisions
of Conv.
Act, 1881.

Sections 10, 11 and 12 of the C. A., 1881, contain provisions (which are to a considerable extent merely declaratory of the previous law) applicable to leases made after the commencement of the Act, as to the effect of the severance of the reversionary or leasehold estate respectively on the rights of the parties. Section 10 provides, in effect, in case of the severance of the reversion, that the owners of the severed portions shall have the remedies for the recovery of the apportioned parts of the rent and the benefit of the lessee's covenants

Recite lease. AND WHAS the inhance & reversion in fee simple of & in the sd house & premes, No. — afd, pt of the sd premes comprd in the hinbfe recited lease, expectant upon the determinon of the term granted by the sd lease, is now vested in the sd B.: AND WHAS the sd B. require for the pposes of, &c., vacant posson of the house and premes afd, wch are delineated in the plan drawn in the margin hrof & thron coloured pink, the remr of the premes demised by the sd lease being coloured blue of the same plan: NOW IT IS HBY, psuant to the provons of the Lands Clauses Consolidon Act, 1845, AGRD AND DECLD betn & by the sd sevl pties hto of the first & third pts, for themselves

Recital of
seisin.

Recital of
premises
being
required.

Agree-
ment.

and condition of re-entry and other conditions (as to the old law, see *Mayor of Swansea v. Thomas*, 10 Q. B. D. 48); section 11 contains a provision, in the like case, for annexing the obligation of the lessor's covenants to the severed portions of the reversion; and section 12 provides in effect (in extension of 22 & 23 Vict. c. 35, s. 3) that in case of the reversion being severed by conveyance, surrender, or otherwise, or of the avoidance or cesser in any other manner of the leasehold interest as to part only of the land, every condition of re-entry or other condition shall be apportioned and remain in force in like manner as if the land comprised in each severed part, or as to which the term remains subsisting (as the case may be), had alone originally been comprised in the lease.

It has been decided in Ireland that a surrender or re-demise to the lessor of part of the premises in the lease had the effect of destroying the condition of re-entry under the doctrine as to the non-apportionability of conditions (see *Mortimer v. Shortall*, 1 Con. & Law. 417, 427, as to a surrender (a decision of Lord St. Leonards); *Lessee Delap v. Leonard*, 5 Ir. L. Rep, 287; 6 Ir. L. R. 473, as to a re-demise: referred to in *Platt on Leases*, Vol. II., 333); and the same principle must, it is conceived, apply to the case of the lessor concurring in an apportionment of the rent and condition of re-entry on an assignment by the lessee of part of the property in the lease. If this be good law, it is remarkable that there should not (so far as the writer is aware) be any English decision on the point, nor any precedent or hint in any of the works on conveyancing, as to the necessity for a defeasance in any such case to revive the condition of re-entry; and the case is not provided for by Lord St. Leonards' Act, 22 & 23 Vict. c. 35, s. 3. See as to the apportionment of conditions, Butl. Co. Litt. 202b, n. (2), 215a; 1 Wms. Saund. 302, ed. 1871; 1 Smith's L. C., notes to *Dumpor's case*, p. 43; and as to defeasances, see 3 Jarm. & Byth. by Sweet, 681—686. The defect, if it existed, is only partially cured by s. 12 of the C. A., 1881, namely, in the case of the avoidance or cesser by surrender or otherwise of the term as to part of the land, and not in the case of a re-demise, or that of the lessor concurring in an apportionment on an assignment by the lessee of part of the property; and the Act only applies where the lease was after the Act. As to the effect of the surrender of the lease of part of the premises upon the covenant for payment of rent, see *Baynton v. Morgan*, 21 Q. B. D. 101; 22 Q. B. D. 74.

Effect of
the Act.

Costs.

resp'y, & for their respive hrs, exs, ads, & assns, on the one pt, & the sd B. for themselves, their succors & assns, on the other pt, THAT the sd yrly rent of £—— sh'l, from the —— day of —— be apportioned in mner follg; that is to say, the yrly rent of £——, pt of such yrly rent of £——, sh'l be the portion thof from that day payable in respt of the sd premes coloured pink on the sd plan, & the yrly sum of £——, the remr of the sd rent of £——, sh'l from the same day be payable in respt of the residue of the sd premes comprd in the sd lease, & wch are coloured blue on the same plan: AND IT IS HBY ALSO AGRD that the sd B. sh'l pay the costs of the sd A., as proved by the Lands Clauses Consolidon Act, 1845, & (a) also the sum of £—— for the costs & chges of his surveyor & solor of & attendg the negotion of these psnts. *Similar provon as to C.'s costs.* IN WITS, &c.

XX.

DEED of COVENANT by the OWNER of a PERPETUAL RENT-CHARGE for APPORTIONING the same. ENDORSED on a CONVEYANCE of the lands subject to the rent-charge (b).

PARTIES, the within named A., owner of rent-chge, 1; the within named B., owner of lands chged, 2. WITNETH, that

As to the
apportion-
ment of
rent-
charges.

(a) As to what costs are payable by B. without special agreement, see *Exp. Buck*, 1 H. & M. 519.

(b) The apportionment can be made by the Board of Agriculture (to which the functions of the Land Commissioners have been transferred by the Board of Agriculture Act, 1889 (52 & 53 Vict. c. 30), on the application of the persons interested in the land and the rent-charge under the Inclosure Act, 1854 (17 & 18 Vict. c. 97), ss. 10 to 14. See also as to apportionment in the case of lands taken under the Lands Clauses Consolidation Act, 1845, ss. 115-117; under the Church Building Acts, 14 & 15 Vict. c. 97, s. 27; 36 & 37 Vict. c. 50, s. 3; of commutation and enfranchisement rent-charges under the repealed Copyhold Acts, 4 & 5 Vict. c. 35, ss. 50, 52, 55; 6 & 7 Vict. c. 23, ss. 4-8; and under the Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 28; and of drainage and improvement rent-charges, 9 & 10 Vict. c. 101, ss. 44, 45; 19 & 20 Vict. c. 9, ss. 8, 10; 27 & 28 Vict. c. 114, ss. 68-71.

As to the
partial
release of

By 22 & 23 Vict. c. 35, s. 10 (passed to remedy the inconvenient doctrine that the release of part of the land charged with a rent-charge operated as

for apportioning the within mentd yrly rent-charge of £50, the sd A. hby covts with the sd B., his hrs & assns, in mner follg (that is to say):—

1st. That so long as the clear yrly sum of £10, pt of the sd yrly rent-charge of £50, shl be duly & punctually pd by eql half-yrly paymts at the times at wch the sd rent-charge is payable, or within 21 days thrafter, as & for the portion of the sd rent-charge payable in respt of the land & bldgs desc'd in the first schdle hto, by the sd B., his hrs or assns for the time being entled to the same land, then & so often as the same shl happen the sd A. will not, nor shl his hrs, exs, ads, or

Apportionment of part of rent on property in first schedule.

a release of the whole land), it was enacted that a release of part of the land charged shall not extinguish the whole rent-charge, but shall only bar the right to recover it out of the land released, “without prejudice nevertheless to the rights of all parties interested in the hereditaments remaining unreleased and not concurring in or confirming the release.” The effect of these saving words has been held to be that where the owner of the rent-charge releases part of the land without the concurrence of the owner of the other part, the whole of the rent-charge is not extinguished, but only a proportionate part of it can be recovered against the owner of the unreleased portion of the land: *Booth v. Smith*, 14 Q. B. D. 318. The doctrine as to a release of part of the land extinguishing the rent-charge did not apply to a release of the land from part only of the rent-charge (Vin. Abr. “Rent,” 504; 3 Cruise Dig. 301; Co. Litt. 148, referred to in Tudor’s L. C., Conv., notes to *Clun’s case*, p. 331); and the enactment above referred to, does not and was not required to cover that case. An apportionment might therefore be effected by a release of each portion of the land from so much of the rent as is to be borne by the other portion; but it is better that it should be effected (as in this precedent) by way of covenant only (according to a plan which was in use to avoid the common law doctrine as to the effect of a release). It has been doubted whether an absolute covenant not to claim the rent against the land would not operate as a release (see Co. Litt. 147b. n.; but see Shepp. Touchstone by Preston, 345); but it seems clear that a conditional covenant, as in the text, could not so operate.

land from a rent-charge.

A rent-charge may be apportioned between several owners without the consent of the owner of the lands, so as to keep alive the right of each owner to distrain for his part (*Rivis v. Watson*, 5 M. & W. 255; 2 Dart, V. & P. 1044; and as to the separate right of distress of each tenant in common of a rent-charge, see *Whitley v. Roberts*, McClel. & Y. 107); and the remedies for the recovery of a rent-charge by distress, or receipt of rents, or appointing a term, which are given by the C. A., 1881, s. 44 (where that Act applies), would also, it is conceived, remain in force after apportionment (whether by severance of the land or of the rent-charge itself). An action also lies against the terre-tenant for recovery of a rent-charge (*Thomas v. Sylvester*, L. R. 8 Q. B. 368; *Swift v. Kelly*, 24 L. R. Ir. 107; *Re Blackburn, &c., Society*, 42 Ch. D. 343; *Searle v. Cooke*, 43 Ch. D. 519), or an apportioned part thereof, whether, as it seems, it be legal or equitable (*Booth v. Smith*, 14 Q. B. D. 318, see pp. 320, 321).

As to the remedies for recovering apportioned rent-charge.

assns at any time hereafter in case of the non-paymt of the sd rent-charge of £50, or any pt thof, distrain or enter on, or cause or procure any distress or entry to be made on the sd land descd in the sd first schdle, or any pt thof, or any bldg thron, or commence, carry on, or prosecute any action or other pdg agst the owners, tenants or occupiers for the time being of the same land & bldgs, or any pt thof, or exercise or avail himself or themselves of any other powers or rts for recovery or compellg paymt of the sd rent-charge of £50, or any pt thof, or in any wise interrupt or disturb the sd B., his hrs or assns, or his or their tenants in the posson or enjoymt or rect of the rents & profits of the same land & bldgs, or any pt thof.

[AND 2ndly, 3rdly, & 4thly, *similar covts with B. in respt of the lands descd in the second, third, & fourth schdles.*]

Indemnity
of property
in each
schedule
against
part of
rent ap-
portioned
on the rest
of the
property.

And [5thly] that he, the sd A., his hrs, exs, & ads will at all times keep the sd B., his hrs & assns, & his or their tenants, of the respive lands & bldgs, descd in the sd respive schdles hto, indemnified agst all losses, costs, damages, & expses wch he or they shl or may incur by reason of any distress or entry being levied or made in or upon the sd lands & bldgs, or any pt thof, or any other pdg being had or taken to enforce or compel the paymt of the sd rent-charge of £50, or any pt thof, contrary to the covts hinfte contd, or any of them. IN WITS, &c.

SCHDLES.

XXI.

FAMILY AGREEMENT *to give effect to* INTENDED
WILL *not* EXECUTED.

Recitals.

THIS indre (a), made, &c., betn A., 1. B., 2. C., 3. D. & E., his wife, 4. WHAS X., late of, &c., died on the — day of

As to for-
malities.

(a) The agreement should be under seal to avoid any question as to there being a sufficient consideration to support it (as to family arrangements, see 2 White & T., Lead. Cas. Eq., notes to *Stapilton v. Stapilton*, 920; Dav. Prec. Vol. III., pt. 1, 278, note). If there is real estate, and the case is not within the Married Women's Property Act, 1882 (which it probably would be as to

— intestate, leavg the sd A., B., C., & E., his four chn & only next of kin him survivg: AND WHAS the sd A. is the eldest son & heir-at-law of the sd X: AND WHAS shortly before his dece, the 'sd X. gave instrons to his solors for the preparon of his last will, & the same was drafted but never signed by the sd X.: AND WHAS the draft will marked Z., this day signed by all the pties hto, is admitted by them & each of them to contain the intd testy disposons of the sd X., & all the sd pties are desirous, notwg the intestacy of the sd X., to deal with & dispose of all his real & psonal este, & also the trust este comprd in a settlemt dated, &c., wch by the sd will the sd X. intd to appt under a power contd in such settlemt, & wch in default of such apptmt wd have devolved on the said pties hto or some of them, under the trusts of the sd settlemt, in the same mner as the same resply wd have been dealt with & disposed of under the sd draft marked Z. if the same had been a completed doct: NOW THIS INDRE WITNETH that in conson of the premes & by way of family arrangemt, & in order to avoid questions & disputes as to the division of the real & psonal este of the sd X., & of the trust este under the sd settlemt, it is hby agrd & decld, & the sd pties hto hby mutually covt as follows:—

Death of
intestate.
Family.
Intended
will.

Agree-
ment.

Wit-
nesseth.

Agree-
ment.

Division of
property.

Execution
of deeds.

1. ALL the real & psonal ppty of the sd X., includg the ppty over wch he had under the sd settlemt a power of apptmt, shl be disposed of, divided, & dealt with in accordce with the terms of the sd doct marked Z., & signed by the sd pties hto as afsd.

2. ALL & every of the sd pties hto, & their respive hrs, exs, ads, & assns, shl exte all such deeds & docts, & do all such acts as may be necy or be deemed expedient to give complete effect to this agrmt, & the costs of the preparon & exon of such docts (inclusive of this agrmt) shl be deemed expses attendg

the testator's own property, but possibly not as to the settled property), the deed must be acknowledged by E.; see *Nicholl v. Jones*, 3 Eq. 696.

Reference may here be made to the authorities deciding that an agreement between two persons having expectations from a third, to divide equally whatever property may come to either of them from him, whether under his will, or intestacy, or by gift *inter vivos*, is valid: *Beckley v. Newland*, 2 P. Wms. 182; *Wethered v. Wethered*, 2 Sim. 183; *Harwood v. Tooke*, *Ib.* 192.

Agree-
ments as
to expec-
tancies.

the exon of the trusts & disposons decl'd & cont'd in the sd doct marked Z.

No proceedings to be taken by any party claiming under intestacy.

3. NONE of the sd pties, or his or her hrs, exs, ads, or assns, shl as next of kin or heir-at-law, or heir accordg to the custom of any manor of the sd X., or as claimg under the trusts cont'd in the sd settlem't in default of any exercise of the power of apptmt afsd, or in any other character bring any action or take any pcdgs agst any other pty hto, his or her hrs, exs, ads, or assns, in referce to any pt of the sd real or psonal ppty of the sd X., or the trust estate under the sd settlem't, but this shl not prejudice the rt of any pty to enforce pformce of this agrmt, or of any of the terms hrof.

Administration to be obtained.

4. THE sd A. shl be allowed to obtain witht opposon lres of admon to the psonal este & effects of the sd X., but such este & effects shl be administered & dealt with accdg to the terms of this agrmt. IN WITS, &c.

XXII.

AGREEMENT *between a FIRM of TRADERS and their WORKPEOPLE, granting to the latter a SHARE in the NET PROFITS of the FIRM.*

Parties.

PARTIES, A., B., & C., carrying on business as —, at —, under the style or firm of — (hinafter called the firm) of the one pt, & the sevl psons named in the schdle hto, being clerks, servants, & workmen of the firm of the other pt: *WHAS* the firm have employed, or agrd to employ, the sevl psons named in the sd schdle at the salaries or wages written opposite to their respive names in the same schdle [in the wages book of the firm]: *AND WHAS* the firm are desirous to give to the sd psons, in addon to their sd salaries or wages, & by way of further remuneron durg the current yr, such sums of moy as hinafter mentd, upon the terms that the sd psons resp'y shd on their pt enter into such agrmt as is hinafter expd: *NOW IT IS HBY AGRD* as follows:—

Recital of engagement.

That workmen are to share in net profits.

A proportionate share of net profits to

1. THE firm will, at the annl stock-takg of the sd business in the month of —, in the yr —, apportion to each pson named in the sd schdle a sum of moy, wch shl bear the same

proportion to one-tenth pt of the net profits of the sd business durg the precedg yr as the salary or wages pd to such pson durg the same yr shl bear to the total amt of salaries & wages pd by the firm durg the same yr.

be apportioned to each workman.

2. THE firm shl, with all convenient speed after the amt of the sd net profits has been ascertained, cause to be prepared a certfe, showg the sum apportioned to each such pson as afsd, & shl cause the same to be signed by the cashier for the time being of the firm, or such other pson as the firm may appt for the ppose, & the sd certfe shl be absolutely bindg & conclusive as to the amt payable under these psnts to each such pson as afsd. The firm will pay to each such pson as afsd the sum appearg by the sd certfe to be apportioned to him immedly after the signature thof by the sd cashier, or such other pson as afsd.

According to the certificate of the cashier.

3. THE firm shl have the sole & exclusive right of ascertaing & determing the amt of the sd net profits, & shl be entled to make allowces & dedons for intt on capital, rent, deprecion in the value of stock & plant, & bad & doubtful debts, & any other allowces & dedons wch the firm may consider pper, & none of the psons named in the sd schdle shl have any rt to examine or inspect the books or accts of the firm, or to make any inquiry or investigon whater as to the amt of the sd net profits, or the sum apportioned to any of the sd psons, or how the same resply are made out, nor shl any of the sd psons be entled to or in any way assume or claim any of the rts or powers of a ptner in the firm (a).

Firm to have exclusive right of determining what are profits.

4. ANY pson named in the sd schdle who shl leave or be discharged from the service of the firm or shl die bfe the sd stocktakg, shl not be entled to have any such sum as afsd apportioned or pd to him or his repves.

Proviso as to workmen leaving service of firm.

5. THE sevl psons named in the sd schdle shl well & faithfully serve the firm in their respive situons, & at their respive salaries & wages as afsd, until the — day of —, 18—, but the firm shl have full power to dischge all or any of the sd psons at any time or times, notwg this agrmt.

Firm may discharge workmen.

6. If any dispute shl at any time arise betn the firm & any one or more of the sd psons named in the sd schdle as to the

Special arbitration clause.

(a) It appears proper, in this case, expressly to declare that no employé shall be a partner. But see note to Precedent V., *supra*, p. 19.

pper meang or constron of this agrmt, or anything done or to be done in psuance hrof, or in anywise relatg hto, the mre in dispute shl be referred to the solor or solors for the time being of the firm, whose decision shl be final & conclusive, & absolutely bindg on all pties : PROV'D ALWAYS that this clause shl not be deemed to limit or affect the rts reserved to the firm, or to extend the rts conferred on the psons named in the sd schdle by the precedg clauses hrof. *Agrmt not to be affected by change in firm, ante, Precedent XI., Clause 18*: In wits whof the sevl pties have hrunto set their respive hands, the sd A., B., & C., & such of the psons named in the sd schdle as are now in the service of the firm on the —— day of ——, & such of the psons named in the sd schdle as are not now in the service of the firm on the sevl days written opposite their respive names in the sd schdle.

[*Schdle.*]

XXIII.

AGREEMENT *between a RAILWAY COMPANY and a LAND-OWNER for withdrawal of the OPPOSITION of the latter to a BILL for the EXTENSION of the RAILWAY through his settled estates (a).*

PARTIES, [A. as agent for & on behalf of] the —— rly Co (hinafter called the Co), 1. B., landowner, 2. C. & D., trees

Powers of
tenant for
life as to
opposing
bills.

(a) See also the next Precedent and the form of agreement in 2 Dav. Prec., pt. 1. Many examples of clauses required for agreements of this kind will be found in some of the important Railway and Canal, &c., Acts, such as the Manchester Ship Canal Act, 1885 (48 & 49 Vict. c. clxxxviii.), and the Manchester Corporation Water Act, 1879 (42 & 43 Vict. c. xxxvi.). Any moneys received by a tenant for life for withdrawal of his opposition are within s. 73 of the Lands Clauses Consolidation Act, 1845: *Pole v. Pole*, 2 Dr. & Sm. 420; but this enactment does not interfere with the power of the tenant for life to contract with the company: *Taylor v. Chichester, &c., Railway Co.*, L. R. 4 H. L. 628. The tenant for life must pay the costs of his opposition above those for which the company are liable (*Re Earl of Berkeley's Will*, 10 Ch. 56), unless the opposition is sanctioned by the Court under the S. L. A. 1882, s. 36.

of the settled estates of the sd B. in the coy of — (hinafter called the trees), 3.

WHAS a bill is now pendg in parliamt by wch it is proposed to empower the Co to make addonal rlys includg a rly in the coy of — to be called the — rly, wch will pass through a portion of the sd settled estates of the sd B. situate in the parishes of, &c., in the same coy: [& it will be necy that such rly shd pass through a portion of such lands situate in the parish of —, ptly by means of a deep cuttg, & ptly by a tunnel]: AND WHAS the sd B. has presented a peton to the House of Commons prayg to be heard agst the sd bill as far as the same affects his ppty & intts: AND WHAS in order to obviate all opposon by the sd B. & his trees to such pendg bill, & for the other pposes hrin appearg, the sd pties hto have agrd to enter into the agrmts hinafter contd: NOW THESE PSNTS WITS, that for the consons hrin appearg the Co do hby agree with the sd B. & also septely with the trees, so far as regards the agrmts & provons hinafter contd wch are or ought to be pformed or observed by the Co; And the sd B. & his trees do hby agree with the Co, so far as regards the agrmts & stipulons hinafter contd wch are or ought to be pformed or observed by the sd B. or his trees, as follows:—

Recital as to pending bill for extension of railway,

and opposition by B.

Agreement.

1. THE Co shl pay to the sd B. or his trees for the pchase of all lands formg pt of the estates of the sd B. situate in the parishes of, &c., wch shl be taken by them for the ppose of the sd rly & works, at the rate of £—— per acre, & so in proportion for any less quantity than an acre, exclusive of timber trees & underwood (c); such sum to be exclusive of compenson for severce & for any injury or inconvenience to

Price to be paid for lands taken and for right to make tunnel (b).

(b) As to clauses 1 and 2, see *Taylor v. Chichester, &c., Railway Co.*, L. R. 4 H. L. 628.

(c) The acquisition of an easement is not authorized by the L. C. C. Act, 1845 (*Pinchin v. London and Blackwall Railway Co.*, 5 D. M. & G. 851; *Great Western Railway Co. v. Swindon, &c., Railway Co.*, 9 App. Cas. 787). If such acquisition is authorized by the Bill, insert, if so intended: "And shall pay to him or them for the rt or easemt of makg, usg & maintaing the tunnel wch will be necy under a portion of the sd estates in the parish of — as afsd, the sum of £——, such respive," &c.

the lands adjoining the lands purchased, [or to the lands over or adjoining the sd tunnel], or to the sd B. or his trees as owners of such lands arising from the construction of the sd rly or the works of the Co, & exclusive also of the compensation payable to the lessees, tenants, or occupiers of the lands taken by the Co [or of the lands over or adjoining the sd tunnel] for the purchase of their interests or otherwise (a).

The whole of certain pieces of land to be taken (b).
Timber.

2. THE Co shd take the whole of the pieces of land noted in the deposited plans & books of reference of the Co for the parish of — aforesaid.

3. THE Co shd pay to the sd B. or his trees for all timber, trees, & underwood on the lands taken by them, at a valuation to be made, in default of agreement, by two valuers or an umpire in the usual way.

Restriction on right of company to take lands outside limits of deviation (c).

4. THE Co shd not under the provisions of the sd intd act without the consent of the sd B. or his trees, take, use, occupy or enter upon any land or part of the sd B. or his trees, outside the limits of deviation shown on the deposited plans except so far as may be necessary for or in relation to the alteration, construction, or extension of any roads, bridges, drains, or other accommodation works in connection with the rly or the works hereby provided to be done by the Co.

Reservation to vendor of right of pre-emption (d).

5. As to any lands of the sd B. or his trees which may be taken by the Co under the provisions of the sd intd Act, but which shd not be required for the purposes thereof, the sd B. or his trees shd have the like right of pre-emption as he or they would have been entitled to under the Lands Clauses Consolidation Act, 1845, if such lands had not been built upon or used for building purposes, &

Provision as to limited owners.

(a) If the landowner is unable to contract except under the provisions of the L. C. C. Act, 1845 (which however would not now usually be the case having regard to the powers of the S. L. A., 1882), add this clause:—

“The Co shd pay the full amount of compensation for each of the purposes aforesaid, determined by a valuation pursuant to the Lands Clauses Consolidation Act, 1845, if such amount shd exceed the respective amounts hereby agreed to be paid.”

(b) See note (b), last page.

(c) See *Doe d. Armitstead v. North Staffordshire Railway Co.*, 16 Q. B. 526; *May v. Great Western Railway Co.*, L. R. 7 Q. B. 364.

(d) See the Act, s. 128; and as to lands taken by agreement, see *City of Glasgow, &c., Co. v. Caledonian Railway Co.*, L. R. 2 H. L. Sc. 160.

no pt of such superfluous lands shl, in the meantime, be let by the Co on lease or from yr to yr or orwise to any pson other than the sd B. or his trees, except only to servants of the Co from yr to yr to be used as garden ground, & for no other ppose (e).

6. THE Co shl pay to the sd B. or his trees, in respt of all land formg pt of the sd estes wch shl be taken or occupied by the Co for the deposit of earth or spoil durg the constron of the sd rly or the exon of the works, or for other temporary pposes, a rent of £—— per acre p.a., & so in proportion for any less quantity than an acre or any less time than a yr, durg their occupon or user of the same (such rent to be exclusive of any compenson payable to the tenants or occupiers of such lands), and shl pperly fence the land so taken: AND in case the Co shl take any lands of the sd B. for the deposit of earth or spoil, they shl remove & store the surface soil to a depth of not less than —— inches, & shl on complon of the works, or sooner in case such respive lands shl no longer be required by the Co for the ppose of the works, restore & deliver up such spoil banks & other lands taken for temporary pposes, & replace the surface soil & leave the spoil banks in uniform heaps pperly trimmed to slopes of not less than four to one, & covered with soil & fit for cultivon, & sown with seeds or planted, as the sd B. or his trees, or their agent, shl direct; And the Co shl also upon givg up the occupon thof pay a sum of £—— per acre, & a proportionate amt for any less quantity than an acre, for all land left covered with spoil, & shl also upon givg up the occupon of the land belongg to the sd B. or his trees, wch may have been taken by the Co for temporary

Occupation
rent for
lands tem-
porarily
taken.

Surface to
be restored.

(e) “ THE Co, upon makg such paymt for the same as afsd, shl have & be entld to the rt, easemt, or liberty of makg, usg, & maintaing such tunnel as they may deem necy for carryg their proposed new line through a portion of the sd estes situate in the parish of —— afsd, & also of erectg & maintaing telegraph posts & wires over the surface of the sd lands above the tunnel in the line of such rly, the Co payg from time to time to the sd B. or his trees, or his or their tenants, compenson for any damage or injury occasioned by the exercise or user of such respive rts, easemts or liberties.”

Liberty
to make
tunnel (e).

pposes, pperly level such land, & remove, or at the option of the sd B. or his trees leave, the fences thto, & pay to him or them compenson for any injury done by the works of the Co to such land, the amt of such compenson, unless settled by agrmt, to be ascertained by the valuon or determinon of two referees or an umpire in the usual way.

Accommo-
dation
works.

7. THE Co shl exte & provide the accomodon & other works specified in the first schdle hto for the proton & benefit of the sd B. & his trees, & his or their tenants, in addon to any other works wch the Co may be or become liable to exte under the genl Acts relatg to rlys for the proton, accomodon, or benefit of the sd B. & his trees, or his or their tenants.

Drainage.

8. THE Co shl not in any respt damage or obstruct the existg drainage of the lands of the sd B., but shl construct pper drains, culverts, & other works for the efficient drainage of the sd lands (so far as the drainage may be affected by the Co's works), at such depths & in such mner as the agent for the time being of the sd B. or his trees shl direct, & also all such works as may be required for maintaing & makg perfect any under drainage wch may be intersected or orwise interfered with by the Co's works.

Execution
and main-
tenance of
accommo-
dation
works.

9. ALL accomodon & other works hinfte agrd to be done by the Co within the boundary of the lands pchased by them shl at all times hinafter be maintained by the Co at their own expse in all respts, & to the reasble satisfon of the sd B. or his trees.

Compen-
sation to
tenants.

10. THE Co shl pay all compenson pperly payable to the lessees, tenants, or occupiers of the lands formg pt of the estes of the sd B. taken by the Co whether permanently or for temporary pposes, [or over or adjoining the sd tunnel], a pper apportionmt or abatemt, to be fixed by the agent for the time being of the sd B. or his trees, being made in respt of the rent payable by the tenant of lands of wch a pt only is taken by the Co.

Costs.

11. THE Co shl pay to the sd B. & his trees, all costs, chges, & expses incurred or to be incurred by him or them in respt of the sd applicon to parliamt & his opposon to & peton agst the sd bill, or in respt of this agrmt, & any deeds, instrumts, or acts wch may be necy or pper for carryg out

the same, or in respt of the works & mres hinbfe agrd to be exted & pformed by the Co, in addon to all other costs, chges, & expses wch may be payable by the Co under the Lands Clauses Consolidon Act, 1845, or any other Act affectg the Co.

12. THE Co shl use their best endeavours to procure the insertion & enactmt in the pendg bill of any clauses or alterons wch the sd B. or his trees may reasbly require for the ppose of givg effect to this agrmt [*or, the clauses contd in the schdle hto eir witht alteron or with such alterons only as shl be assented to by the sd B. or his trees*].

Clauses to be inserted in Bill giv- ing effect to agree- ment (a).

13. EXCEPT the two last precedg clauses, the agrmts on the pt of the Co hinbfe contd are contingent on the sd pendg bill being passed into a law in its psent or some modified form in the psent session of parliamt, so far as regards the clauses authorisg the formon of the sd rly through the estes of the sd B.

Agreement conditional on Bill being passed.

14. ON the faith of this agrmt being in all respts specifically pformed & observed on the pt of the Co, the peton of the sd B. agst the sd bill shl be withdrawn, & the sd B. & his trees shl not, directly or indirectly, offer or sanction any opposon to the sd bill.

Opposition to be with- drawn.

15. THE expression "the trees," as hinbfe used, shl include the hrs & assns of the sd trees. IN WITS, &c.

Interpre- tation.

[*Schdles.*]

(a) Where the bill refers to and seeks to confirm the agreement, it must be scheduled to and printed with the bill (Commons S. O., session 1893), and must contain a clause declaring it to be subject to such alterations as Parlia- ment may think fit to make in it (Lords S. O., session 1893). If the clauses to be inserted in the bill require a reference to a plan, the plan should be referred to as, "signed by — the chairman of the Committee of the House of Commons to whom the bill for this Act was refd, & deposited in the private bill office of that House."

Standing orders as to Bill confirming agreement.

XXIV.

AGREEMENT *between the* PROMOTERS *of a* RAILWAY
COMPANY *and a* LANDOWNER *for withdrawing* OPPOSITION
to the COMPANY'S BILL.

PARTIES, A. & B., some of the provonal committee (a) of the
intd Rly Co hinafter mentd (who are hinafter called the Pro-
moters, 1. The Co hinafter mentd as intd to be incorpd under
the name of the — Rly Co (hinafter called the Co, 2. C.,
landowner, 3.

Recital as
to pending
Bill for
incorpora-
tion of
Company,
and opposi-
tion by C.
Intro-
ductory
recitals.

Agreement.

WHAS the promoters & others are promotg a bill now pendg
in parliamt, intituled, &c., whby it is proposed to incorporate
the Co, & to authorise them to make & maintain a rly from
— to —, the line of wch rly wd pass for a considerable
distce through a farm & lands situate, &c., of wch the sd C. is
tenant for life: AND WHAS the sd C. has lodged in the House
of Commons a peton agst the sd bill: AND WHAS, in order to
the obviatg of all opposon by the sd C. to the sd bill & for the
other pposes hrin appearg, the pties hto of the first & third pts
have entd into the agrmts hinafter contd, with the intention
that the Co shl become pty to & exte these psnts forthwith
after their incorporon: NOW THEREFORE THESE PSNTS
WITS that for the consons hrin appearg it is hby mutually
agrd by & betn the promoters, on behalf of themselves & all
other the promoters of the pendg bill, & with the intent to
bind the Co, on the one hand, & the said C. for himself &
his assns, & also for the trees & beneficial owners from time
to time of the farm & lands afsd (& who is & are comprd in
the expression "the sd C." as hinafter employed), on the
other hand, & also by way of septe agrmt betn the Co on the
one hand, & the sd C. on the other hand, as follows:—

1. [*Special agrmts, see last Precedent.*]

Certain
clauses to
be inserted
in the Bill.

2. THE promoters will use their utmost reasble endeavours
to procure the insertion & enactmt in the pendg bill of the
clauses wch are set forth in the schdle hto.

(a) As the provisional committee cannot bind the company when incor-
porated (Hodges on Railways, pp. 142, 143; Browne & Theobald on Railways,
p. 536), it is important to have the personal guarantee of some responsible
person.

3. [*Provon as to costs to be paid by Co or promoters, see last Precedent.*]

4. If the pendg bill be passed into law in the psnt session, the promoters will within — days thrafter procure the Co to exte, under their common seal, eir these psnts & the duplicate thof, as the pty thto of the second pt, or some other deed or instrumt to be prepared by the Co adoptg this agrmt, & on the same being so exted by the Co, all the future liability of the promoters under this agrmt shl cease: [And in case the Co shl refuse or neglect to exte this agrmt or such other deed or instrumt as afsd within the time hinfte limd, & in this respt time shl be of the essce of the contract, the sd A. & B. & their respive hrs, exs & ads, shl be jtly & sevlly liable to pay on demand the sum of £—— to the sd C., his exs or ads, as liquidated damages.]

Agreement to be executed by Company when incorporated (b).

5. ON the faith of this agrmt being on the pt of the promoters & the Co resply in all respts specifically pformed & observed, the sd C. will not in any mner, eir by himself or his agents, further oppose or orwise impede the passage of the sd bill through parliamt. IN WITS, &c.

Opposition to be withdrawn.

[Schdle.]

XXV.

AGREEMENT *for* WORKING a QUARRY. A Short Form (c).

AGRMT, &c., betn A., hinafter called the owner, 1; B., hinafter called the contractor, 2. IT IS HBY MUTUALLY AGRD that the contractor shl get stone from the quarry, lately opened on — farm by the owner upon the terms follg:—

(b) It would, of course, be better to get a clause inserted in the bill making the agreement binding on the Company; see as to this above, p. 65, note (a).

(c) It will be seen that this is merely a working agreement, not operating as a demise. For forms operating as demises of quarries, &c., see LEASES, MINING. As to quarries more than twenty feet deep, see The Quarries Act, 1894.

THE CONTRACTOR SHL AT HIS OWN EXPSE—

1. GET and cord bldg & rough blue stone from the sd quarry for the use of the owner.

2. REMOVE the whole of the stone from any pit bfe openg anor.

3. FILL in every pit as soon as it is exhausted, or sooner if required, & replace the top mould so as to render it as fit as circes will admit for agricultural operons.

THE OWNER SHL—

4. PAY to the contractor the sum of — shillings per cubic yard for gettg & cordg bldg stone, & the sum of — shillings per cubic yard for gettg & cordg rough blue stone.

AND IT IS HBY AGRD AS FOLLOWS—

5. THE contractor shl cord the stone at the option of the owner at the mouth of the quarry or by the side of the turnpike road, but in the latter case the owner shl cart the stone from the quarry to the side of the turnpike road at his own expse.

6. THE contractor shall rece a weekly paymt on acct in proportion to the work actually done, but not to exceed £—— a week for each man actually employed. Such paymt is to be brought into acct when the corded stone is measured, & the balce, if any, pd to the contractor. If the balce shd be agst him, he shl forthwith repay the same to the owner.

7. EIR pty may determine this contract on givg one week's written notice, & thrupon the contractor shl, if required by the owner, fill in every open pit & replace the top mould so as to render it as fit as circes will admit for agricultural pposes. But if the owner shl determine the contract, the contractor shl be at liberty prior to fillg in any pit to get & cord the stone from the same, he workg with all pper despatch & being pd for the stone after the rate afsd. IN WITS, &c.

APPOINTMENTS.

PRELIMINARY NOTE.

SEE Elph. Introd. 78, 838. For conveyances by way of appointment, see CONVEYANCES; for testamentary appointments, see WILLS; and see also SETTLEMENTS; and for the appointments of new trustees, see that heading.

The law as to appointments is chiefly important in connection with appointments under special powers, i.e., powers exercisable in favour of a limited class of objects, as to which the following points principally require notice:

Law as to appointments under special powers.

By the Act 37 & 38 Vict. c. 37 (which, though it does not expressly so declare, is considered, and has, it is believed, been treated, as undoubtedly applying to powers previously as well as subsequently created), the Illusory Appointments Act (1 Wm. 4, c. 46), was extended so as to enable an exclusive appointment to be made, although not expressly authorised by the power, without leaving a nominal sum for the excluded objects.

Exclusive appointments.

Care must, of course, be taken to keep within the power as to the objects in whose favour an appointment may be made, bearing in mind that under a power to appoint to children an appointment cannot be made to the issue of a child (*Brudenell v. Elwes*, 1 East, 442, 7 Ves. 382); nor to the representatives of a deceased child (*Maddison v. Andrew*, 1 Ves. Sen. 58), for whom provision can only be made by leaving a share unappointed to devolve on them under the trust in default of appointment (with the aid of the hotchpot clause, if any), assuming that the deceased child had attained a vested interest; but a power to appoint to "issue" *prima facie* includes all descendants (*Leigh v. Norbury*, 13 Ves. 344; *Marshall v. Baker*, 31 Beav. 608; *Re Warren*, 26 Ch. D. 208); and therefore under such a power an appointment may be made to a child, with remainder to his issue, the class of issue who take being restricted as to perpetuity.

Objects of power.

Special care must also be taken in exercising such a power to keep within the limits of the rule against perpetuities, both as regards the objects of the appointment and the time at which their interests are to vest, the criterion being whether the interests created by the appointment would have been valid if inserted in the instrument creating the power: see 3 Dav. Prec. 154; Tudor's L. C., Conv. 484 *et seq.*, notes to *Cadell v. Palmer*. Thus, under a power in an antenuptial settlement to appoint to issue generally, an appointment to a son for life with remainder to such of the son's children as attain 21, is of course too remote (*Re Warren, ubi sup.*); so under a similar power the vesting of the shares of the children of the marriage cannot be postponed to a later age than 21, except as to those who attain the specified age within 21 years from the death of the surviving parent; and where the

Perpetuities.

appointee was unborn at the time of the creation of the power, although a life interest can be validly given to him, with remainder over to an object of the power, a restraint on anticipation cannot be annexed to the life interest in the case of a female, so as to restrict the power of disposition beyond the legal limit (*Fry v. Capper*, Kay, 163, and later cases referred to in *Vaizey on Settlements*, p. 836, note (1); *Whitby v. Mitchell*, 42 Ch. D. 494, 44 Ch. D. 85); and the life interest cannot be made forfeitable on bankruptcy or alienation, or any other event, so as to create such a restriction (*Hodgson v. Halford*, 11 Ch. D. 959, where the clause of forfeiture was on a change of religion; and see 1 Jarm., Wills, p. 828). The rule against perpetuities has not superseded, but exists independently of, the old rule against "a possibility on a possibility;" which latter rule does not apply to personalty, but only to legal limitations of real estate; see the discussion in *Re Frost*, 43 Ch. D. 246; *Whitby v. Mitchell*, 42 Ch. D. 494, 44 Ch. D. 85.

Delegation
of power.

It should also be remembered that a special power being fiduciary cannot be delegated (Sug. Pow. 179), so that if an appointment under a power to appoint to children or issue is made to a child for life with remainder to its issue, a power of appointment among the issue cannot be given to the child (*Ingram v. Ingram*, 2 Atk. 88; *Williamson v. Farwell*, 35 Ch. D. 128); and for the same reason, although the life interest of the child can be validly made determinable on bankruptcy, &c., if the child was born before the creation of the power, the usual trust (creating a protected life interest) for the application of the income after forfeiture at the discretion of the trustees for the benefit of the child and other objects, even although the latter are within the power, would be bad.

Other
points.

The equitable doctrine as to frauds on powers must also be carefully borne in mind; see as to this the notes to *Aleyn v. Belchier*, 1 White & T. L. C., Eq. 437. As to what conditions may lawfully be annexed to an appointment, see remarks of Hall, V.-C., in *Hodgson v. Halford*, 11 Ch. D. 966. Where an appointment is made under a settlement, containing a power to the husband or wife to withdraw part of the funds from settlement on a second marriage or otherwise, this power should be expressly reserved or negatived where it would clash with the appointment. As to the effect of the donee of a special power releasing or covenanting not to exercise it, or to exercise it in a particular manner, see *infra*, SETTLEMENTS.

An appointor exercising a special power cannot supersede the trustees of the settlement creating the power and substitute other trustees, *Re Tysen*, [1894] 1 Ch. 56.

See further as to appointments under special powers, 3 Dav. Prec. 144 *et seq.*; Tudor's L. C., Conv., notes to *Alexander v. Alexander*, p. 403 *et seq.*

Instances of miscarriage in the case of appointments under special powers owing to want of attention to one or other of the points above mentioned, are frequent.

As to the stamp duty on appointments, see the Stamp Act, 1891 (54 & 55 Vict. c. 39), sched. tit. APPOINTMENT, SETTLEMENT.

I.

APPOINTMENT *by* INDEPENDENT DEED-POLL (a) *by* a WIDOW *under a power in her Marriage SETTLEMENT, of a SUM of STOCK* (b), PART of a larger SUM, *subject to the APPOINTOR's life INTEREST, to a SON. VARIATION, appointing the EQUIVALENT in MONEY, in case of a CHANGE of INVESTMENT.*

TO ALL TO WHOM THESE PSNTS SHL COME, A., of, &c., sends greetg: WHAS by an indre dated, &c., and made betn, &c. (being a settlemt exted in conson of the marre shortly aftwds solemnised betn the sd A. & B.), certn shares or intts to wch the sd A. was then entled in reversion expectant on the dece of her father K. in the trust moys, stks, funds, or secs, subjt [or to become subjt] to the trusts of an indre dated, &c., and thrin reld to, & wch were by the now reciting indre assnd to the sd P. & Q., and three sevl sums of £—— Consold. 3 p.c. annies, £—— Reduced 3 p.c. annies & £—— New 3 p.c. annies (c) wch were thrin recited to have been transferred into the names

Recitals.
Marriage
settlement
of appoin-
tor.

(a) Appointments of the nature of that in the text are frequently made without recitals (see Prec. III.). It is sometimes convenient to endorse the appointment on the settlement creating the power, as in the next Precedent; or it may be described as supplemental or as intended to be read as annexed to the settlement or will (without of course the necessity for any actual physical annexation); see the C. A., 1881, s. 53, and above p. 2, note. In either case recitals of the original deed or will, and of any previous endorsed or annexed deeds or of matters therein recited, will be omitted, except so far as a reference to the contents of the previous instruments may be necessary to make the new deed intelligible. Probably the practice (a very convenient one) of engrossing deeds bookwise, will become general, so as to lead to the general adoption of the plan of "annexing" supplemental deeds, which can often be done where endorsement would be impracticable or inconvenient.

As to en-
dersing and
annexing
appoint-
ments.

(b) It is obviously better to appoint a sum of money, and not a specific sum of stock, having regard to the possibility of the investment being changed.

(c) Since the National Debt Act, 1870, the old 3 per cents. have been described (as in that Act) as above. The proper designation of the stock created under the National Debt Conversion Act, 1888, s. 2 (4) (popularly known as Goschens) is "2 $\frac{3}{4}$ per cent. Consold. stk" until the 5th of April, 1903, after which date it will be "2 $\frac{1}{2}$ per cent. Consold. stk." The small amount of 2 $\frac{3}{4}$ per cent. stock previously in existence (known as Childers), differs as not being reducible to 2 $\frac{1}{2}$ per cent. As to the effect of the Act of 1888, and as to previous legislation with regard to the National Debt, see Burdett's "Official Intelligence."

Designa-
tion of
public
funds.

Death of
father of
appointor.

Payment
of settled
share to
trustees.

Death of
appointor's
husband.

Present
state of
the trust
funds.

That ap-
pointee is
one of the
children of
the mar-
riage.

Desire to
appoint.

Witness.

Appoint-
ment of
sum of
stock.

of the sd P. & Q., were settled upon certn trusts after the solemnization of the sd then intd marre for the investmt & varyg the investmt thof, & for paymt & applicon of the income thof durg the lives & life of the sd A. & B. & the survivor of them (a), and after the death of such survivor in trust as to the trust premes and the income thof for all or any of the chln of the sd marre in such shares & mner in all respts as the sd B. & A. shd by any deed or deeds revocable or irrevocable jtly appt & in default of & subjt to any such apptmt as the survivors of them the sd B. & A. shd in like mner appt: AND WHAS the sd K. died on the — day of —: AND WHAS shortly after the death of the sd K. the sum of £ — was pd to the trees of the sd indre of settlemnt in satisfon of the sd shares or intts thby settled: AND WHAS the sd B. died on the — day of —, witht havg concurred with the sd A. in makg any apptmt of any pt of the sd trust premes under the jt power in that behalf given to them by the sd indre of settlemnt: AND WHAS the sd respive sums of £ — Consold. Reduced and New 3 p.c. annies & the sd sum of £ — are now represented by the sums of stk & secs the parlars whof are specified in the schdle hto, all of wch are now standg in the names of S. & T., the psnt trees of the sd settlemnt: AND WHAS there have been —chln of the marre of the sd A. & B., of whom C. of, &c. is one: AND WHAS the sd A. is desirous of makg such apptmt of pt of the sd trust funds in favour of the sd C. as is hinafter contd: NOW THESE PSNTS WITS that in exercise of the power for this ppose given to her by the sd indre of settlemnt, & of every or any other power enablg her in this behalf (b), the sd A. doth hby irrevocably appt that the sum of £ — 2½ p.c. stk, pt of the sum of £ — like stk specified in the sd schdle hto, shl subjt to the prior intts thrin durg the life of the sd A. under the sd settlemnt & subjt to the duties if any wch will be payable in respt thof on the death of the sd A. (c)

(a) The form of recital as to income in the text is very convenient where either life interest is determinable or protected, but it is not adapted to the case where a life interest is intended to be released.

General
words in
appoint-
ments.

(b) These general words referring to all powers should be inserted in appointments; but in a case in which the circumstances were special, in the absence of any recital showing what power was in fact intended to be exercised, they were held ineffectual; *Re Porter*, 45 Ch. D. 179.

(c) Estate duty will be payable on the death of whichever of the husband

belong to & be held in trust for the sd C. his exs, ads, & assns absolutely, but witht prejudice to the powers of varyg investmts contd in the sd recited indre (d). In wits whof the sd A. has hrunto set her hand & seal this — day of —.

The Schdle above refd to.

[*Schdle of Investmts.*]

Signed, sealed, and delivered by the {
above-named A. in the presce of (e). }

and wife takes the first life interest, except where “a husband or wife is entitled either solely or jointly with the other to the income of any property settled by the other” under a settlement made before the 2nd August, 1894, “and on his or her death the survivor becomes entitled to the income of the property so settled, in which case the estate duty on such property is not payable till the death of the survivor: Finance Act, 1894, s. 21 (5). In all cases where estate duty is paid in respect of settled property, neither estate duty nor succession duty (see 16 & 17 Vict. c. 21) at the rate of £1 per cent. is payable in respect of the same property till the death of a person who was at the time of his death or had been at any time during the continuance of the settlement competent to dispose of the property (s. 5 (2)). Probably, the additional succession duty at $\frac{1}{2}$ per cent. imposed by the Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 81), s. 21, is not payable in this case. But succession duty at the higher rate and additional succession duty will be payable if the property was settled by a person who is not an ancestor of the children.

(d) If so intended add, “PROVD ALWAYS, & the said A. doth hby appt & direct, that if at the death of her, the sd A., the sd trust funds & ppty shl not comprise the sum of £—— $2\frac{3}{4}$ p.c. stk, then such a sum of like stk, if any, as at the death of the sd A. shl be comprd in the sd trust funds & ppty, shl be considered as hby appted, & shl be appropriated as far as the same will extend, towards satisfon of the apptmt hinfte contd, & the sd trust premes shl moreover be chged with the paymt to the sd C., his exs, ads, or assns, at the death of the sd A., of such a sum of moy as, with the value of the $2\frac{3}{4}$ p.c. stk (if any) then comprd in the sd trust premes, shl at the price of the day make up the equivalent of the sd sum of £—— stk, with intt on such sum of moy to be computed from the death of the sd A. at the rate of £3 10s. p.c. p.a.”

Appoint-
ment of
equivalent
in money
in case of
a change
of invest-
ment.

(e) Where special formalities as to the mode of execution are prescribed by the power, the appointment may either be executed as so prescribed or attested by two witnesses in the ordinary mode; see 22 & 23 Vict. c. 35, s. 12. Notice of the appointment should be given to the trustees of the settlement.

Formali-
ties as to
execution.

II.

APPOINTMENT *by DEED-POLL endorsed on the SETTLEMENT creating the power by a WIDOW of PART of a SUM of STOCK to a SON on his MARRIAGE, and RELEASE by the APPOINTOR of her LIFE INTEREST (a), there having been a previous endorsed APPOINTMENT of new TRUSTEES. VARIATIONS where this and the prior appointment are made SUPPLEMENTAL to the SETTLEMENT instead of being ENDORSED, and where a SUM has previously been advanced to the son.*

Recitals.
Death of
husband.
No pre-
vious ap-
pointment.

TO ALL, &c., the above-named (b) A., formerly the wife & now the widow of the within-named B., sends greetg. WHAS the sd B., the late husbd of the sd A., died on the — day of — : AND WHAS no apptmt was ever made by the sd A. & B. under the jt power of apptmt vested in them by the within

As to the
advance-
ment
clause.

(a) Where it is desired to make an immediate advance to a child by way of portion on marriage or otherwise, this may be done under the power of advancement, if it is within the power (see a form of consent by a tenant for life for this purpose, *infra*, DIRECTION AND CONSENT), or by appointment and release of the life interest of the parent or parents (if the case so admits), as in this Precedent. The latter course is often adopted to relieve the trustees from responsibility. The release of the life interest would seem to be a voluntary settlement or transfer of property liable to be avoided under s. 47 of the Bankruptcy Act, 1883 (see *Re Player*, 15 Q. B. D. 682): but though the beneficiaries might be accountable, the trustees could hardly be so.

(b) The words “above-named” have reference to the prior endorsed deed, which is supposed to contain a recital of the marriage. Otherwise that recital should be inserted; see Precedent IV.

Variation
where deed
is supple-
mental.

If the appointment is made supplemental to the settlement (see above, p. 71, note), the deed may commence:

“TO ALL, &c., A., of, &c., widow, sends greetg. WHAS these psnts are intd to be read as supplemental or annexed to an indre of settlemnt dated, &c., & made betn, *pties* (hinafter called the settlemnt), & to an indre dated, &c., & made betn, &c., being an appointmt of new trees of the settlemnt: AND WHAS, &c.”

The settlement and the matters contained in it will of course in that case not be referred to as “within” written or mentd, &c., those expressions being only appropriate to endorsed deeds. See as to supplemental deeds the note *infra*, DEEDS.

written indre of settlemt (c) : AND WHAS the trust funds now remaing subjt to the trusts of the sd indre of settlemt consist of the sum of £—— debe stk of the —— Rly Co, & £—— Stk of the Bank of England, standg in the names of the above-named L. & M. the psnt trees thof : AND WHAS a marre is intd shortly to be solemnised betn C., one of the chln of the sd A. & B., & D., of, &c., & the sd A. is desirous of apptg to the sd C. the sum of £——, pt of the sd sum of £—— Bank Stk, [in addon to the sum so advcd for his benefit as afsd], & of surrenderg to him her life intt in the same in mner hinafter mentd: NOW THESE PSNTS WITS that, in exercise of the power in that behalf given to her by the within written indre of settlemt, & of every other power enablg her thrunto, the sd A. doth hby irrevocably appt that the sum of £——, pt of the sd sum of £—— Bank Stk, shall immedly after the solemnison of the sd intd marre vest in & be held in trust for the sd C. for his absolute benefit free from all duties wch will be payable in respt thof on the death of the sd A., wch shl be chgd upon & payable out of the residue of the trust funds comprd in the sd settlemt (d) : AND THESE

State of funds.

Intended marriage, &c.

Witness. Appointment to take effect on the intended marriage.

Release

(c) Where an advancement has been previously made, insert “ AND WHAS, on the —— day of ——, the sum of £—— New £3 p.c. annies, pt of the trust funds then subjt to the trusts of the sd indre of settlemt, was sold out by the trees thof, & the proceeds thof were applied for the advancemt in the world of C., one of the chln of the sd A. & B., with the consent of the sd A., psuant to the power in that behalf in the same indre contd.”

Advancement to a child.

(d) The question whether estate duty is payable on the death of a tenant for life within one year after surrendering his life interest has not yet been decided. It appears, however, that none can be payable. The only provision of the Finance Act, 1894, by which duty can be imposed is s. 2 (1) (c), which includes under property passing on death, property which would have been liable to account duty under the Customs and Inland Revenue Act, 1881 (44 & 45 Vict. c. 12), s. 38, as amended by the Customs and Inland Revenue Act, 1889 (52 & 53 Vict. c. 7), s. 11, if those sections had extended to real as well as personal property and the words “voluntary,” “voluntarily,” and a reference to volunteers had been omitted from them. The case under discussion does not fall under the Act of 1881, s. 38 (2) (a) as amended, as the life interest is extinguished by the release; it does not fall under s. 38 (2) (c) because the life interest is immediately taken possession of and enjoyed by the donee, as no beneficial interest therein passes by survivorship on the death of the tenant for life to any other person, and as no interest or power to reclaim any interest is reserved to the tenant for life. Till the question has received judicial decision trustees cannot safely act on this opinion.

Bearing in mind that where estate duty has once been paid succession

Succession duty.

of life interest to take effect on the marriage.

Appointment to be void if marriage does not take place.

PSNTS FURTHER WITS that, in conson of the sd intd marre, the sd A. doth hby assn & surrender to the sd C., the life intt of her, the sd A. in the sd sum of £—— Bank Stk hinbfe apptd, to the intent that the sd C. may immedly upon the solemnison of the sd intd marre become absolutely entled in posson to the sd sum of £—— Bank Stk, & that the same may be immedly transferable by the trees or tree of the sd indre of settlemt to the sd C., his exs, ads, or assns (a): PROVD ALWAYS, & the sd A. doth hby declare, that if the sd now intd marre shl not take place within six calr months from the date hrof, these psnts & everythg hrin contd shl be void (b). IN WITS, &c.

duty at the lower rate is not payable during the continuance of the settlements (see the Finance Act, 1894, s. 5 (2)), it follows that in the case given in the text succession duty at the lower rate will be payable in respect of the property in which A. takes the first life interest, but not in respect of that in which B. took the first life interest, as estate duty was paid in respect of that property on his death. It is obviously more convenient to appoint the fund free of duties, otherwise succession duty would have to be compounded for and paid in advance.

Shorter form of appointment otherwise than on marriage.

(a) A shorter form applicable to an appointment otherwise than on marriage would be to appoint “that the sum of £—— sterlg shl forthwith be raised by the trees of the sd settlemt clear of all dedons in respt of all duties wch will be payable in respt thof on the death of the sd A. (wch shl be borne by & pd out of the residue of the trust funds comprd thrin) by sale of a sufft pt of the sum of £——, &c., formg pt of the sd trust funds, & shl be pd by them to the sd B.: AND in order to enable the sd sum of £—— to be forthwith raised & pd to him as afsd, the sd A. doth hby rele & surrender her life intt thrin to & in favour of the sd B. absolutely.”

Hotchpot.

“PROVD ALWAYS, & this apptmt is made subj to the condon, that the sd C., his exs, ads, or assns, shl not, unless an express diren to the contrary shl be contd in any apptmt to be hrafter made by the sd A. under the afsd power, be entld to any share in the unappted pt of the trust funds or ppty subj to the trusts of the sd settlemt witht bringing the share hby apptd to him [as well as the sum so advcd to him as afsd] into hotchpot & acctg for the same accdly.”

As to making appointment

This clause is valid; *Re Buckley*, [1893] W. N. 95.

(b) This proviso is proper, although the appointment is conditional on the marriage taking place: see *Page v. Horne*, 9 Beav. 570, 11 Beav. 227;

III.

APPOINTMENT (*by Independent Deed without RECITALS (c)) by HUSBAND and WIFE to a DAUGHTER, on her MARRIAGE (d), of a certain ALIQUOT SHARE in the Trust Funds comprised in their Marriage SETTLEMENT (e). VARIATIONS, where a SUM of MONEY is appointed (f) and where a FURTHER Share is appointed by way of ACCRUER in the event of another CHILD dying under age (g), and where there has been a previous partial APPOINTMENT to another CHILD, and the whole of the remaining Trust Funds are appointed, subject to a limitation of a total amount (h). A short form.*

KNOW ALL MEN BY THESE PSNTS, that we, A., of, &c., the husbd, & B. his wife, in psuance of an agrmt entd into upon the treaty for a marre shortly to be solemnised betn our daur C., & D., of, &c., & in exercise of a power given to us by an indre of settlemt dated, &c., and made, &c., & of every or any other power in this behalf us enablg, do hby irrevocably appt that, subjt & witht prejudice to the trust in the sd indre contd in relon to the income of the trust funds & ppty for the time being subjt to the trusts thof

Appoint-
ment to
daughter,
subject to

Mitford v. Reynolds, 16 Sim. 130; or, if preferred, the form of appointment in Precedent IV. may be adopted. As the fund in this case is to be immediately transferred to the appointee, there is no need to give notice of the appointment to the trustees, especially if it is endorsed.

void if
marriage
does not
take place.

(c) See p. 71, note (a).

(d) Such an appointment is usually made in contemplation of the appointed share being settled; the appointment may in that case be contained in the same deed as the settlement, but is usually separate; see **SETTLEMENTS**. As to the validity of appointments on a bargain for a settlement on marriage or otherwise, see 3 Dav. Prec., pt. 1, pp. 149, 150, note; *Re Turner*, 28 Ch. D. 205; *Re Crawshay*, 43 Ch. D. 615.

As to ap-
pointments
on a bar-
gain.

(e) This form, securing a fixed share to the child about to marry, is a common mode of appointment; but if some of the children are minors, or there is a possibility of more children being born, and the object is to secure to the child indefeasibly the share which he or she would have taken in default of appointment, neither less nor more, the next Precedent should be used.

As to al-
ternative
form.

(f) See p. 78, note (a), 79, notes (f), (h).

(g) See p. 78, note (c).

h) See p. 78, note (d), p. 79 (j).

life inter-
ests,
of aliquot
share

durg the lives of us, the sd A. & B., & the life of the survivor of us, one equal — pt or share (a) of the trust moys, stks, funds, secs, & ppty comprd in or subjt or wch, by means of the accruer of other ppty under the provon in the sd indre contd for the settlemt of after-acquired ppty of me, the sd B. (b), shl at any time hrafter become subjt to the trusts of the sd indre of settlemt (c) (d) shl, from & after the solemnison of the sd intd

or, fixed
sum.

(a) The sum of £—— sterlg, to be a chge upon & raisable & payable out.

As to sub-
sequent
addition to
the settled
funds.

(b) These words do not extend to an addition made to the settled funds by means of a gift of money to be held on the trusts of the settlement. If a fund has already been added to the settled funds by any such means it should of course be specifically noticed: see *Re Curteis*, 14 Eq. 217. If property has been directed by any instrument to be held on the trusts of the settlement the appointment should be made not only under the power in the settlement, but also under the power conferred by that instrument by reference to the settlement.

Form pro-
viding for
accruing
share.

(c) The following addition is adapted to the case of the appointment extending to a further share by way of accruer in the event of a younger child who is under age dying without attaining a vested interest: "AND further that in case our daur X. shl die before attaing the age of 21 yrs, & witht havg been married, then & in such case (subjt & witht prejudice as afsd) a further one eql — share of one eql — share (makg one eql — share) of the sd trust funds & premes after deductg from such last-mentd one — share any sum or sums wch may have been pd or applied out of the sd trust premes for the advancemt or benefit of the sd X., & after addg to such one — share any accumulons of surplus income wch may have arisen from the expectant share of the sd X., after providg for her maintce & educon, shl from & after the solemnison of the sd intd marre belong to & be vested in the sd C., & be held in trust for her, her exs, ads & assns absolutely, & shl be transferable to her or them upon the dece of the survivor of the sd A. & B. or upon the dece of the sd X., wch shl last happen, in addon to the one — share hinfte apptd to the sd C., so as to make the total share of the sd C. in that event one eql — pt of the sd trust premes, after makg such dedons or addons (if any) as last afsd."

or, all the
remaining
funds.

(d) "All & singr the trust funds & ppty comprd in or subjt or wch by means, &c., as above to the trusts of the sd indre of settlemt, & wch shl remain after satisfyg a certain previous

marre of the sd C. & D., belong to & be vested in the sd C. & be held in trust for the sd C. her exs, ads, & assns absolutely (e), & shl be transferable (f) to her or them forthwith upon the dece of the survivor of us, the sd A. & B. (g) (h) (j). *Apptmt to be void if marre does not take place: see Precedent II.* IN WITS, &c. (k).

apptmt in favour of X., one of our chln, made by a deed poll under our respive hands & seals, dated, &c."

(e) If the fund is not intended to be settled, but to belong to the daughter absolutely for her separate use, this had better be expressed, notwithstanding the Married Women's Property Act, 1882, by adding here, "for her septe use independently of any husband;" see *infra*, SETTLEMENTS.

As to separate use.

(f) Raisable & payable.

(g) If authorised by the power (as to which see Vaizey on Settlements, Vol. II. 1218), the following may be added here to enable the fund to be transferred to the appointee in the lifetime of the appointors: "or sooner if we or the survivor of us shl by deed revocable or irrevocable so appt or direct;" or the power of advancement, if any, may be exercised with the same object; see above, p. 74, note.

Payment during appointors' lifetime.

(h) With intt from such dece until the raisg & paymt thof at the rate of 4 p.c. p.a.

(j) *If the whole of the remaing funds are to be apptd, subj to a limon of the total amt, add, "PROVD ALWAYS, & the sd A. & B. do hby declare, that not more than the sum of £—— sterlg is in any event intd to be hby apptd, & that in case by means of the accruer of other ppty, wch shl become subj to the sd provon for the settlemnt of after-acquired ppty of the sd B. or orwise the trust funds & ppty subj to the trusts of the sd indre of settlemnt, & now remaing unapptd, shl exceed in value such sum, such value to be ascertained in such mner as the trees or tree for the time being shl think fit, then the sum of £—— sterlg only shl upon the death of the survivor of them, the sd A. & B., be raised & pd to the sd C., her exs, ads, or assns, with intt, &c., & that the residue of the sd trust premes, after satisfyg the sd previous apptmt, & raisg such sum of £——, & intt, shl remain unaffected by these psnts."*

Proviso limiting total amount appointed.

(k) Notice of this appointment should be given to the trustees of the settlement.

IV.

APPOINTMENT, *endorsed on the SETTLEMENT creating the power, to a SON on his MARRIAGE, of the SHARE which he would have taken in DEFAULT of any APPOINTMENT, subject to the DEDUCTION of a sum ADVANCED to him during his MINORITY.*

Recitals.
Marriage.
State of
family.

Advance-
ment to
appointee
and other
children.

Witness.

Appoint-
ment sub-
ject to life
interests,
and if
marriage
take place,
of the
share
which the
appointee
would have
taken in
default of
appoint-
ment.

TO ALL, &c., the within named A. & B., his wife, formerly L. within named, resp'y send greetg. WHAS the marre of the sd A. & B. was duly solemnised shortly after the date of the within written indre: AND WHAS there have been issue of such marre seven chln, includg a son C., who has attned the age of 21 yrs: AND WHAS in the yr — the sum of £—— was, with the consent of the sd A. & B., raised out of the trust funds comprd in the within written indre & applied for the advancemt of the sd C. & the expses incident thto, & advancemts have also been & may hrafter be made in favour of others of the sd chln in respt of their expectant shares of the sd trust funds under the power in that behalf within contd: *Intd marre of C. with D., p. 75: Desire to appt p. 72:* NOW THESE PSNTS WITS that in exercise, &c., the sd A. & B. do hby, subj't & witht prejudice to their respive life intts under the trusts of the within written indre, absolutely & irrevocably appt to the sd C., in the event of the sd intd marre of the sd C. & D. being duly solemnised within six calr months from the date of these psnts, such a pt or share of the trust moys, stks, funds, secs, & ppty wch are now or may hrafter be comprd in or subj't to the trusts of the within written indre (includg in the ppty so comprd the sum of £—— so pd or applied for the advancemt of the sd C. as afsd, & any other sums wch have been or may be advanced for the benefit of any of the sd chln under the powers afsd, & also any income & accumulons of income), as the sd C. wd take or be entld to, if no apptmt were made by the sd A. & B., or the survor of them, under eir of the powers by the same indre given to them, or the survor of them, in that behalf, & the whole of the sd trust premes were to devolve under the trusts in the sd indre contd in default of any exercise of eir of such powers, & so as to be divisible in eql shares among the chln of the sd A. & B., who,

being sons or a son, attn the age of 21 yrs, or being daurs or a daur, attn that age, or marry under that age, regard being had to the advce wch has been made of the sum of £—— for the benefit of the sd C., & as pt of his share as afsd, & wch is to be brought into hotchpot, & acctd for by him in the same mner as if no apptmt had been made as afsd, & regard being also had to any other advcemts wch have been or may be made under the afsd power in that behalf, & to the operon & effect of that power, & the powers & provons for maintce & educon, & the accumulon & destinon of surplus income contd in the sd settlemnt or arisg by statute, wch shl resply remain exercisable & applicable in all respts in the same mner as if this apptmt had not been made, to the intent that the share wch the sd C. wd have so taken in the sd trust premes as afsd, shl become & be an absolutely & indefeasibly vested & transmissible intt immedly on the solemnison of the sd intd marre, & be transferable to the sd C., his exs, ads, or assns immedly on the dece of the survor of the sd A. & B., or as soon aftwds as such share shl be ascertained, & the case will admit. In WITS, &c. (a).

Advance-
ments to
be brought
into hotch-
pot.

V.

APPOINTMENT *under a Power in a Will by a HUSBAND and WIFE, subject to their LIFE INTERESTS, of TRUST FUNDS invested in STOCK and on MORTGAGE, to CHILDREN, so as to EXCLUDE one who is otherwise provided for (b), the FUNDS being appointed UNEQUALLY. PROVISIONS for ADVANCEMENT, MAINTENANCE, &c. VARIATIONS where the FUNDS are appointed to all the CHILDREN (exclusive of one), born and to be born, at twenty-one or marriage EQUALLY, and where a power of REVOCATION is reserved.*

TO ALL TO WHOM THESE PSNTS SHALL COME,
A., of, &c., & B., his wife, send greetg. WHAS X., of, &c.,

Recitals.

(a) Although the appointment is endorsed, formal notice of it had better be given to the trustees.

(b) See above, p. 69, note.

Will. deced, duly made his will dated, &c., & thby bequed the sum of £—— Reduced £3 p.c. annies to trees upon trust eir to permit the same to remain in its then state of investmt, or with such consent, or at such discron as thrin mentd from time to time to vary & transpose the investmt thof as thrin expd, And upon further trust to pay the income thof to the sd A. durg his life, & after his dece to the sd B., if she shd survive him, durg her life, And after the dece of the survor of the sd A. & B., in trust, *for their chln as A. & B. shd by deed appt, settg out the material pt of the power fully*, & in default of any such appmt as the survor of them, the sd A. & B., shd by deed or will appt, & in default of any such apptmt upon the trusts thrin expd: *Death of testor & probate*: AND WHAS N., O., & P. are the psnt trees of the sd will, the sd O. & P. havg been respby appted trees thof under a power in that behalf thrin contd in the place of L., one of the origl trees, who had died, & M., anor of such trees, who had retired from the tree-ship: AND WHAS the sd sum of £—— Reduced £3 p.c. annies was in the yr —— sold out, & pt of the proceeds thof invested in the pchase of £—— India Stk, & £—— the residue thof was invested on mtge of certn freehd ppty at ——, & the sd trust funds & mtge secy are now vested in the sd N., O., & P., upon the trusts of the sd will: AND WHAS there have been issue of the marre of the sd A. & B. four chln & no more, namely, C., D., E., & F., all of whom are now livg, & of whom the sd C. & D. have attained the age of 21 yrs: AND WHAS the sd A. & B. are desirous of apptg the sd trust funds among the sd D., E., & F., in mner hinafter appearg, the sd C. being orwise provd for: NOW THESE PSNTS WITS that, in exercise of the power in that behalf given to them by the sd will of the sd X., & of every, &c., the sd A. & B. do hby [absolutely & irrevocably] appt that from & immedly after the dece of the survor of them, the sd A. & B., & in the meantime subjt & witht prejudice to their respive life intts in the sd trust premes, the trees or tree for the time being of the sd will shl hold the sd respive sums of £—— India Stk, & £—— invested on mtge as afsd, or other the trust funds & ppty wch by means of any change of investmt or orwise shl hrafter represent the same respby, & the income thof, In trust for & for the absolute benefit of the sd D., E., & F., in the propor-

Change of trustees.

Change of invest-ment.

Issue of marriage.

Desire to appoint.

Appoint-ment.

To three children unequally,

tions & mner follg, namely, as to one moiety of the sd trust premes, in trust for the sd D., his exs, ads, & assns; as to one eql fourth pt thof, in trust for the sd E., his exs, ads, & assns; & as to the remaing one fourth pt thof, in trust for the sd F., her exs, ads, & assns: [Or, in trust for all the chln or any the child already born or hrafter to be born of the sd A. & B. his wife (other than & exclusive of the sd C.), who, being a son or sons, [has or have attnd or] may hrafter attn the age of 21 yrs, or being a daur or daurs, [has or have attnd or] may hrafter attn that age, or may marry, their, his, or her respive exs, ads, & assns, if more than one in eql shares], AND so that the share of the sd F. [& of any other daur hrafter born of them, the sd A. & B.,] of & in the sd trust premes, shl be for her septe use, independently of any husbd whom she may marry (a): AND the sd A. & B. do hby further declare that, *provons for advancemt & maintce & accumulon as to minors, as in a settlemt* (b): [Or, AND the sd A. & B. do hby further declare that all the powers & provons in the sd recited will contd for the advcemt (whether in the lifetime or after the dece of the sd A. & B. resply), & maintce & educon of minor chln, & the accumulon & applicon of surplus income of the shares of minors, shl be applicable to the shares hinfte apptd in the same mner as if the same or the like powers & provons had been hrin inserted, or as near thto as may be]: [PROVD

or, to all the children, except one, equally at 21, &c.

Shares of daughters to be for separate use.

Provisions for advancement, maintenance, &c.

Power of revocation.

(a) Where an appointment is made so as to exclude an eldest son, and the younger children are all under age, provision should be made for the possibility of their all dying without attaining a vested interest, by appointing the fund in that event to the eldest son. As to the frame of a trust of this kind, or excluding a son or daughter succeeding to the family estate, or a title, see *infra*, SETTLEMENTS.

Younger children not attaining vested interests.

(b) The advancement, maintenance and accumulation clauses in a settlement or will are usually only applicable to the shares taken in default of appointment, and they should therefore be inserted in an appointment, when required (see *infra*, SETTLEMENTS); or the clauses for these purposes contained in the original settlement or will might usually be incorporated by reference, as in the text. As to the expediency of relying on the provisions of s. 43 of the Conv. Act, 1881, as to maintenance and accumulation, see SETTLEMENTS. It should be borne in mind that where (as in this Precedent) both parents are living, if the mother is restrained from anticipation, or has a reversionary life interest governed by the old law, so that she could not release her life interest, the power of advancement should (if authorised by the power) extend to the shares of adults, according to the common form: see 3 Dav. Prec., p. 173.

As to advancement, maintenance and accumulation clauses.

ALWAYS, & the sd A. & B. do hereby declare, that it sh^l be l^{fl} for them the sd A. & B. at any time or times hereafter during their joint lives, by any deed or deeds revocable or irrevocable, [or for the survivor of them at any time or times during his or her life, in like manner or by will or codicil], wholly or partially to revoke the appointment hereinbefore contained (a), & by the same or any other like instrument to appoint & declare any new or other trusts or provisions concerning the sd trust funds & premises, or any part thereof, which may be or would have been authorised by the power by the sd will given to the sd A. & B. [or the survivor of them] in that behalf as aforesaid (b).] IN WITNESS, &c. (c).

Alternative form.

(a) The following is another form which may be substituted from this point, but the above form seems preferable:—"So & in such manner that the sd trust funds & premises sh^l so far as such revocation sh^l extend, stand settled in the same manner & subject to the same power [or powers] of appointment as if these provisions had not been extended."

Power of revocation.

(b) A power of revocation may be reserved although not expressly authorised: Sug. Pow., 367. But as the original power is fiduciary and not capable of delegation or extension (see above, p. 70) the power of revocation must not as regards the person to whom it is given, or the mode of execution (namely by deed or will), go beyond the original power; it may be reserved to the survivor of the appointors where this accords with the original power (*Brudenell v. Elwes*, 7 Ves. 382; Sug. Pow. 364; *Dixon v. Pyner*, W. N. 1886, p. 88; 34 W. R. 528; 30 Sol. J. 433; *Re Harding*, [1894] 3 Ch. 315); but if the original power was given to the husband and wife jointly, and to the husband if he survived, a power of revocation reserved to the wife if surviving would be bad (*Burnaby v. Baillie*, 42 Ch. D. 282). It is desirable also that the appointment should, as regards the formalities of execution, conform to the original power, though this is not essential: see Sug. Pow. 366. As to the effect of a power of revocation, see *Evans v. Saunders*, 6 De G. M. & G. 654; 8 H. L. Ca. 721.

(c) Notice of this appointment should be given to the trustees of the will.

VI.

REVOCABLE APPOINTMENT *under Power in SETTLEMENT of PERSONALTY, excluding eldest SON, some of the CHILDREN being under age. VARIATIONS, where there has been a previous absolute APPOINTMENT to one of the CHILDREN, and where the SHARE of a CHILD dying in the LIFETIME of the PARENTS is to go over to his or her ISSUE, or to the other CHILDREN.*

TO ALL, &c., A., of, &c., & B., his wife, send greetg.
Recite settlemt on marre of A. & B., contg usual power of apptmt among the chln or remoter issue of marre, ante, pp. 71, 72, that there have been issue six chln, C. (eldest son), D., E., F., G., & H., of whom F., G., & H. are under 21 (d) [previous apptmt to D. (a daur), of one-fifth of trust funds on her marre]. Psnt state of investmt of trust ppty: AND WHAS the sd C., the eldest son of the sd A. & B., being orwise sufftly provd for, the sd A. & B. are desirous that the whole of [the residue remaing unappted of] the sd trust funds & ppty shl be secd to their chln [or remoter issue] exclusive of the sd C., in such mner & subjt as hinafter appears: NOW THESE PSNTS WITS that in exercise of the power for that ppose given to them by the hinbfe recited indre of settlemt as afsd, & of every, &c., the sd A. & B. do hby direct & appt that the trees or tree for the time being of the sd indre of settlemt shl from & after the death of the survor of them, the sd A. & B., & in the meantime subjt to their respive life intts [in case the whole or pt of the ppty in settlemt is revy, say, & subjt to any subsistg prior life or other intt or intts in the same] stand possed of the whole of [the residue now remaing unappted of] the trust funds & premes comprd in or wch are now or hrafter may be subjt to the trusts of the sd settlemt in trust for such of them, the sd D., E., F., G., & H., as, being male, have attnd or shl attn the age of 21 yrs, or being female, have attnd or shl attn that age or marry under that age, if more than one in eql shares, & as to such of them as are female for their respive septe use independently of any husbd: [Or, if there has been a

Recitals.

Desire to appoint.

Witness.

Appointment, subject to life interests, of trust funds

to children.

Variation.

(d) See above, p. 83, note, as to the case of the younger children being all under age. This Precedent assumes that there will be no more children. For a form extending to future born children, see the last Precedent.

Accruer on death under age or unmarried.

previous apptmt to one of the chln (D.), who is only to participate in any accrug share, in trust for the sd E., F., G., & H., their respive exs, ads, & assns, in eql shares, as to females for septe use : PROV'D ALWAYS, & the sd A. & B. do hby further appt & direct, that if any of them, the sd F., G., & H., shl die, being male, under the age of 21 yrs, or being female, under that age & unmarried, then the share as well origl as accrug under this psnt clause of such one of them so dying shl accrue & go over to the others or other of the sd D., E., F., G., & H., their, his, or her respive exs, ads, & assns, in eql shares. The follg is a form of accruer clause, to be substituted for the above accruer clause, where the power of apptmt extends to grandchln, & it is desired to give over the share of any child dying in the lifetime of the parents to his issue, or in default of issue to the other chln (a) :

Accruer on death of child in parent's lifetime or under age and without issue.

“ PROV'D ALWAYS, & the sd A. & B. do hby further appt & declare, that if any of them, the sd E., F., G., & H., shl die durg the lifetime of the sd A. & B., or of the survor of them, leavg a child or chln who shl be livg at the dece of such survor, or if any of them, other than the sd E., shl die after the dece of such survor, under the age of 21 yrs, & leavg a child or chln, then such child or chln shl take in eql shares if more than one, the share or shares (whether origl or accrug as next hinafter provd), wch their parent wd if livg & attng the age of 21 yrs be entled to, & further that if any of them, the sd E., F., G., & H., shl die durg the lifetime of the sd A. & B., or of the survor of them, witht leavg issue who shl be livg at the dece of such survor, or if any of them, other than the sd E., shl die after the dece of such survor under the age of 21 yrs & witht leavg issue, then the share as well origl as accrug under this psnt clause of such one of them so dying shl accrue & go over to the others or other of the sd D., E., F., G., & H., their, his, or her respive exs, ads, & assns, in eql shares.”]
Provons for advcement & maintce, &c., see last Precedent. Power of revocon, see above, p. 83. IN WITS, &c. (b).

As to above proviso.

(a) This mode of settlement, by which the share of a child pre-deceasing the tenant for life is given over, is not to be recommended. The ordinary trust whereby a child attaining 21, &c., takes an absolutely vested interest which he or she may settle on marriage, is much to be preferred. See SETTLEMENTS.

(b) Notice of the appointment should be given to the trustees of the will.

VII.

DEED POLL *making a Previous Revocable* APPOINTMENT *under a SPECIAL POWER absolute by means of a RELEASE of the POWER of REVOCATION (ENDORSED on the APPOINTMENT).*

KNOW ALL MEN, &c., that I, the within-named A., by virtue of every or any power enablg me in this behalf, whether under the within-mentd indre of settlemt or orwise, do hby absolutely rele & give up the power of revocon in the within-written deed poll contd, to the intent that the apptmt thrin contd in favour of the within-named B., his exs, ads, & assns, shl become & be henceforth absolute & indefeasible (c).
IN WTTs, &c.

Release of
power of
revocation.

VIII.

DEED POLL *making a revocable* APPOINTMENT *among CHILDREN absolute as to one CHILD in CONTEMPLATION of his or her MARRIAGE—one of the APPOINTORS being a MARRIED WOMAN (d).*

TO ALL, &c., A., of, & B. his wife, send greetg. *Recite settlemt creatg power; that C. is one of the chln of A. & B.; previous* Recitals.

(c) Another way is to reappoint to the appointee “dischgd from the power of revocon & new apptmt” contained in the previous deed; but the form in the text is preferable. The requirements as to attestation, &c., as in the case of the original appointment, should be observed. See p. 73, note.

(d) It being considered that a married woman before the Conv. Act, 1881, s. 52, was not competent to *release* a power (see Sug. Pow. 92), except in cases coming within the Fines and Recoveries Act, 3 & 4 Wm. 4, c. 74, or 20 & 21 Vict. c. 57 (Malins’ Act); and that until it has been decided that the Conv. Act, 1881, s. 52, and the Conv. Act, 1882, s. 6, apply to married women, it would not be safe to rely on them as removing the disability of coverture (see Wolstenholme Conv. 108); and inasmuch as the Married Women’s Property Act, 1882, although it empowers a married woman to dispose of her own separate estate, and to enter into contracts (under which she might possibly validly covenant not to exercise a power) does not remove her disability to *release* a power, at any rate such as this, the object is in this case effected by a partial revocation and reappointment, instead of by a release as in the last Precedent.

As to
release of
power by
a married
woman.

Treaty for
intended
marriage.

Witness.

Partial re-
vocation.

Further
witness.

Absolute
appoint-
ment of
share to C.

Saving
clause.

revocable apptmt among chln: AND WHAS a marre is intd shortly to be solemnised betn the sd C. & D., of, &c., & upon the treaty for such intd marre it was agrd that the sd A. & B. shd revoke the apptmt in the hinbfe recited deed poll contd, to the extent & in mner hinafter appearg, & shd make such new apptmt in favour of the sd C. as is hinafter contd, to the intent that the same shl be absolute & irrevocable, but subjt to the provo hinafter contd for avoidg these psnts in the event hinafter mentd: NOW THESE PSNTS WITS that in psuance of the sd agrmt, & in exercise of the power for this ppose reserved to them by the hinbfe recited deed poll as afsd, & of every, &c., the sd A. & B. do hby revoke & make void the apptmt made, or expd to be made, by the sd deed poll, so far as regards the one eql — pt or share thby appted, or expd so to be, in favour of the sd C. of the trust funds & ppty comprd in the sd settlemt: AND THESE PSNTS FURTHER WITS that in exercise of the power or powers for this ppose given to them by the hinbfe recited indre of settlemt, & of every, &c., the sd A. & B. do hby direct & appt that the trees or tree for the time being of the sd indre of settlemt, shl from & after the death of the survor of them, the sd A. & B., & subjt to any prior life or other intt in the same, stand possed of the one eql — pt or share wch was by the hinbfe recited deed poll appted to the sd C., & the apptmt whof is hinbfe revoked, of or in the sd trust funds & ppty comprd in the sd settlemt, in trust for the sd C., her exs, ads, & assns absolutely, And to be an immedly vested & transmissible intt accdly: PROVD ALWAYS that nothg hrin contd shl affect the apptmt in the sd deed poll of, &c., contd, except so far as the same is hinbfe revoked: *Provo avoidg deed in case of marre not takg place, see Precedent II. (a).* IN WITS, &c.

(a) Notice of the deed should be given to the trustees of the settlement.

IX.

PARTIAL REVOCATION of a PRIOR APPOINTMENT and
RE-APPOINTMENT securing to a CHILD ON MARRIAGE a
SUM of MONEY in lieu of his or her ALIQUOT SHARE (b).

TO ALL, &c., A., of, &c., & B., his wife, send greetg.
*Recitals & first witsg clause contg revocon of apptmt to C., the
child about to marry, as in Precedent VIII.* AND THESE
PSNTS FURTHER WITS that in exercise, &c., the sd A. &
B. do hby revoke & make void the trusts & provons by & in
the hinbfe recited deed poll contd of & concerng the trust funds
& premes thby appted in favour of the chln of the sd A. by the
sd B., other than the sd C., as far & to such extent as is necy
to give effect to the apptmt hinafter contd but not further or
orwise, AND under or by virtue of the power contd in the
hinbfe recited indre of settlemt & of every, &c., do hby, &c.,
Apptmt of sum of moy to C., see Precedent III. PROVD ALWAYS
that nothg hrin contd shl affect, &c., *as in last Precedent.*
Provo avoidg deed in case of marre not takg place, see Pre-
cedent II. IN WITS, &c. (c).

Partial re-
vocation.

Appoint-
ment.

Saving
clause.

X.

APPOINTMENT by a FATHER, TENANT for LIFE of Settled
Real ESTATES, to one of his younger CHILDREN, of part
of a SUM of MONEY raisable for PORTIONS and secured
by a TERM in the usual manner.

TO ALL, &c., A., *tenant for life*, sends greetg. WHAS by
an indre, &c., being a settlemt exted in contempon of a

Recitals.
Settlement
creating
power (d).

(b) For forms modifying settlements by a partial exercise of a power of
revocation, see SETTLEMENTS.

(c) Notice of the deed should be given to the trustees of the settlement.

(d) If the appointment is made by supplemental deed (see p. 71, note),
substitute for the recital of the settlement:—"WHAS these psnts
are supplemental to an indre, &c., being a settlemt on the marre
of the sd A. of the — este, &c., under wch he has a power
of apptmt over a sum raisable for portions of his yor chln
under the trusts of a term of 1000 yrs."

Variation
for supple-
mental
deed.

State of
family.

Intended
marriage.

Desire to
appoint.

Appoint-
ment of
share.

marre wch was shortly aftwds solemnised betn the sd A. & B., certain — & hds, in the parishes of — & — in the coy of —, were assured & limd after the solemnison of the sd marre (among other uses not material to be hrin recited), to the use of the sd S. & T., their exs, ads, & assns, for the term of 1000 yrs, to commence from the death of the sd A., witht impeachmt of waste, upon trust, *recite trusts of portions term, down to & includg the power of apptmt among the yor chln*; AND WHAS there have been issue of the sd marre six chln, besides some who died in infancy & unmarried, that is to say, an eldest son & five yor chln, one of whom attnd his age of 21 yrs, & aftwds died, & the others of whom are all under that age & unmarried; AND WHAS a marre is intd shortly to be solemnised betn C., one of such yor chln, & D., of, &c., & in order to make provon for the sd C. on her marre, the sd A. is desirous of apptg the sum of £——, pt of the sum wch, in the event, will become raisable for portions under the sd term of 1000 yrs, to or in favour of the sd C., in mner & subjt as hinafter mentd: NOW THESE PSNTS WITS that in exercise of the sd recited power & of every, &c., the sd A. doth hby irrevocably appt that, in case the sd intd marre of the sd C. shl take place within six calr months from the date hrof (a), the sum of £——, being a pt or share of the sum wch, in the event, will become raisable for portions under the trusts of the sd term of 1000 yrs as afsd, shl, immedly after the sd intd marre of the sd C., belong to & be vested in the sd C. for her absolute benefit, & that the same shl be payable to her, or her exs, ads, or assns, upon the death of the sd A., with intt at the rate of 4 p.c. p.a. from his death until paymt thof [*if raisable immedly*, shl be raisable & payable to her, or her exs, ads, or assns, immedly after such marre, with intt at the rate of 4 p.c. p.a. to be computed from the sd marre] (b). IN WITS, &c. (c).

As to
charging
interest.

(a) See above, p. 76, note (b).

(b) As to the power of the appointor to charge interest and to fix the rate, see Sug. Pow., p. 697; *Balfour v. Cooper*, 23 Ch. D. 472.

(c) Notice of this deed should be given to the trustees of the term.

XI.

POST-NUPTIAL APPOINTMENT *by a MARRIED WOMAN of LIFE INTEREST in PERSONALTY to her HUSBAND under a POWER in a WILL. VARIATIONS where the appointment is REVOCABLE, and for an ANTE-NUPTIAL APPOINTMENT, and where the LIFE INTEREST is determinable on BANKRUPTCY, &c. (d).*

TO ALL, &c., I, A., the wife of B., of, &c., send greetg. Recitals.
 WHAS X., late of, &c., deced, by his will dated, &c., & proved Will.
 on the — day of — in the — Registry, bequed the sum
 of £—— to trees upon trust for my benefit durg my life &
 after my dece upon the trusts thrin mentd, subjt to a power
 thby given to me by deed to appt from & after my dece the
 whole, or such pt as I shd think fit, of the annl income of the
 sd legacy, or the trust funds representg the same, for the
 benefit of any husbd I might leave survivg me durg his life, or
 for any less period, & subjt to any restrons I might think
 fit: AND WHAS I am desirous of exercisg the power of apptmt Desire to
 reserved to me by the sd will as afsd in mner [& subjt as] appoint.
 hinafter expd: NOW THESE PSNTS WITS that, in exercise Appoint-
 of the power for this ppose given to me by the sd will as afsd ment to
 & of every other power, &c., I hby appt that from & after my husband
 dece, if my husbd the sd B. shl survive me, the whole of the for life.
 income of the sd legacy of £——, or of the trust funds &
 premes for the time being representg the same, shl be pd to my
 sd husbd or his assns durg his life: [PROVD ALWAYS & I declare Power of
 that it shl be lful for me at any time hrafter by deed wholly or revocation.
 partially to revoke the apptmt hinfte contd] (e). IN WITS, &c.

(d) If the appointment is ante-nuptial, it will recite the intended marriage, and that “upon the treaty for the sd intd marre it was agrd that I the sd A. shd make such apptmt as is hinafter contd”; and the appointment will be expressed to be “in conson of the sd intd marre”; see SETTLEMENTS. If the husband’s life interest is to be determinable on bankruptcy or alienation, the form will be the same as in a settlement limiting a reversionary life interest so determinable (see SETTLEMENTS); but the discretionary trust usually added to give a protected life interest must not be inserted, unless specially authorised by the power, as this would be bad as amounting to a delegation of the power (see above, p. 70). Variation for ante-nuptial appointment.

As to determinable life interest to husband.

(e) Notice of this deed should be given to the trustees of the will.

XII.

APPOINTMENT *under a general Power in a Will of FREEHOLDS in fee, subject to the LIFE ESTATE and FAILURE of ISSUE of the APPOINTOR, a MARRIED WOMAN, PART of the property being appointed to her HUSBAND, and the REMAINDER to another MARRIED WOMAN for her SEPARATE USE. VARIATION where the legal ESTATE is in TRUSTEES. POWER of REVOCATION.*

Recitals.
Will.

Death, &c.
Desire to
appoint.
Appoint-
ment.

As to part
to husband.

Residue to
a married
woman.

Power of
revocation.

General
words.

TO ALL TO WHOM THESE PSNTS SHALL COME, A., the wife of B., of, &c., sends greetg. WHAS X., late of, &c., deced, made his last will, dated, &c., & thby, among other disposons, devised certn freehd messes, lands, & hds, situate in the parishes of, &c., in the coy of, &c., thrin more parlarly desc'd, to the use of [trees in trust for] the sd A., *for life remr to her issue, & in default of issue as she shd by deed or will appt, settg out the power fully*, with remrs over : *Death of X., & probate* : AND WHAS the sd A. is desirous of makg such apptmt of the sd hds as is hinafter contd ; NOW THESE PSNTS WITS that the sd A., in exercise of the power for that ppose given to her by the sd recited will & of every, &c., doth hby [absolutely & irrevocably] appt & direct that from & after the dece of her, the sd A., & in case the limons [trusts] in the sd will contd of the sd hds & premes after her dece & precedg the power of apptmt limd to her as afsd shl fail, the sd hds & premes shl be & remain to the uses [*if the legal este is in trees*, shl be held upon the trusts] follg, that is to say : As to all that, *pcels (a)*, being pt of the sd devised premes, to the use of [in trust for] the sd B., his hrs & assns for ever : AND as to all & singr other the hds & premes devised by the sd will as afsd to the use of [in trust for] L., the wife of M., of, &c., her hrs & assns, as her septe ppty, independently of the sd M. or any future husbd : PROVD ALWAYS, that it shl be lful for the sd A., at any time or times hrafter by any deed or deeds, revocable or irrevocable, or by will or codl (*b*), to

(a) The general words may be omitted, as an appointment is a conveyance within s. 6 of the Conv. Act, 1881. See s. 2.

(b) That a mere general devise would not operate as an exercise of this

revoke or alter, eir wholly or partially, all or any of the [uses &] trusts hinfte appted & decl'd of or concerng the sd hds & premes or any pt thof, & to limit, appt, or declare any new or other [uses] trusts or provons concerng the same or any pt thof. In WITS, &c. (c).

XIII.

REVOCATION of APPOINTMENT of LEASEHOLDS *under a general Power in a Will, and new APPOINTMENT thereof to the ISSUE of the original APPOINTER upon his DECEASE.*

TO ALL TO WHOM THESE PSNTS SHALL COME, A., the wife of B., of, &c., sends greetg. *Recite will bequeathg leasehd ppty to trees in trust for A. for life for her septe use, remr as she may appt by deed or will, in default in trust as thrin mentd; apptmt of exors; death of testor & probate; assent of exors to beqt; previous revocable apptmt to C.:* AND WHAS the sd C. has, since the sd apptmt to him was exted, died, leavg a son, D., & two daurs, E. & F., him survivg, all of whom are now under the age of 21 yrs: *Desire to revoke & reappt:* NOW THESE PSNTS WITS that in exercise of the power for that ppose reserved to her by the sd deed of apptmt & of every, &c., the sd A. doth hby absolutely revoke & make void the sd apptmt to the sd C., and in lieu thof she, the sd A., doth hby, in exercise of the power for that ppose given to her by the sd will & of every, &c. [absolutely & irrevocably] appt & direct that all & singr the sd leasehd premes or other the ppty wch may hrafter by means of any sale, investmt, or orwise, be substituted for the same or any pt thof, & the rents & income thof shl from & after the dece of her, the sd A., be held by the trees or tree for the time being of the sd will in trust for such one or more of the sd D., E., & F., as shl attn the age of 21 yrs, or being the sd E. or F. shl marry, &

Recitals.

Will, &c.

Death of previous appointee.

Revocation.

New appointment.

power, see *Pomfret v. Perring*, 5 De G. M. & G. 775; *Palmer v. Newell*, 20 Reav. 32; *Re Brace*, [1891] 2 Ch. 671.

(c) If the legal estate is in trustees, notice of this deed should be given to them.

Provision
for death of
all appoint-
ees under
21, &c.

Proviso
keeping
alive and
extending
powers of
leasing,
&c., in
will.

their respive exs, ads, & assns, if more than one in eql shares, as tenants in common: *PROVD ALWAYS*, & the sd A. doth hby further appt & direct, that in case the sd D. shl die under the age of 21 yrs, & both of them the sd E. & F. shl die under that age, & witht havg been married, then from & after the dece of the sd A., & such default or failure of issue of the sd C., wchever shl last happen, the sd trust premes, & the rents & income thof, togr with all accumulons, or so much thof as shl not have been applied or disposed of under the trusts or powers for advcemt & maintce hby [or by law] vested in the sd trees or tree, shl be held in trust for X., of, &c., his exs, ads, & assns absolutely: *PROVD ALWAYS* that the apptmt hincf contd shl not affect the powers of leasg, sale, investmt, & transposg investmts contd in the sd will, & that the same respive powers shl continue in force & exercisable durg the minority of the sd D., or the minority & discoveriture of the sd E. & F. resply, in the same mner as if the same or the like powers had been hrin repeated, or as near thto as may be: *Provons for advcemt & maintce & accumulon of surplus rents & income: see SETTLEMENTS, & above, p. 88. IN WITS, &c. (a).*

XIV.

APPOINTMENT *by DONEE of GENERAL POWER of a residuary estate in his own favour (b).*

Recitals.

TO ALL, &c., A., of, &c., sends greetg. *Recite will bequeathg a sum in trust for A. for life, with remr on such trusts as he may by deed or will appt: death & probate:* AND WHAS the sd A. has determined to exercise the power of apptmt given to him by the sd will as afsd in mner hinafter expd: NOW THESE PSNTS WITS that, in exercise, &c., the sd A. doth hby irrevocably appt & direct that the residy este of the sd

Appoint-
ment.

Tenant for
life with
general
power of
appoint-
ment.

(a) Notice of this deed should be given to the trustees of the will.

(b) It is not uncommon for a tenant for life to have a general power of appointment by deed or will over the reversion. In such a case it sometimes conduces to simplicity and saves trouble if he makes the property his own by an appointment of this nature. But *qu.* whether an appointment of this kind might not in some cases increase the succession duty ultimately payable see *A.-G. v. Mitchell*, 6 Q. B. D. 548. It cannot affect the estate duty.

testor & the investmts & ppty constitutg or representg the same shl belong to & be vested in him the sd A., his exs, ads, & assns absolutely, & that the same shl be forthwith pd or transferred to him the sd A., his exs, ads, or assns accdly. In WITS, &c.

XV.

DEED POLL by DONEE of GENERAL POWER of APPOINTMENT over REAL ESTATE exercisable by DEED only, to enable him to CHARGE it by WILL.

TO ALL, &c., A., of, &c., sends greetg. Recitals. Settlement. WHAS under & by virtue of an indre dated, &c., and made, &c., divers estes & hds situate, &c., stand limd & settled, (subjt to certn chges & incumbrces affectg the same or some pts thof,) To such uses, upon such trusts & subjt to such powers & provons as the sd A. shl by any deed or deeds, revocable or irrevocable, direct or appt, & in default of such apptmt To the uses in the sd indre of settlemt expd: AND WHAS the sd A. is desirous of availg himself of the power of apptmt given to him by the sd indre of settlemt as afsd, for the ppose of enablg him by will or codl to chge the sd settled estes or any of them in mner hinafter mentd: NOW THESE PSNTS WITS that in exercise of the power given to him by the sd indre of settlemt as afsd & of every, &c., the sd A. doth hby appt that it shl be lful for him, the sd A. by his will or any codl thto to chge all or any of the estes, lands, tenemts & hds comprd in the sd indre of settlemt, or wch by any means are or shl be subjt at law or in equity to the subsistg uses or trusts thof, with such annl & gross sums & other moys (whether in the way of ppal or intt), as he, the sd A., shl think fit, & for the ppose of raisg or securg such annl or gross sums or other moys or any of them, or in relon thto, to limit, create, declare or make any powers, estes, terms, trusts or provons whatsr: Desire to appoint. Appointment enabling appointor to charge the settled estates by will. Power in settlement to remain unaffected. PROVD ALWAYS, & the sd A. doth hby declare that the power of apptmt reserved to him by the sd indre of settlemt as afsd shl remain & continue exercisable by him, the sd A., by deed in the same mner as if these psnts had not been exted. In WITS, &c. (c).

(c) Notice of this deed should be given to the trustees.

XVI.**APPOINTMENT** *by deed of a GUARDIAN by a FATHER (a),
for his Infant SON and DAUGHTER, after his decease.*Appoint-
ment.Substitu-
tion.

KNOW ALL MEN BY THESE PSNTS, that I, A., of, &c., hby appt B., of, &c., to be the gdian of my son, R., & daur S., or, “hby dispose of the custody & tuition of my son R., & daur S., to B., of, &c.,” from & after my death durg the minority of my sd son & daur respby: But in case the sd B. shl die in my lifetime or durg the minority of my sd son or daur, or shl refuse to act, then I appt C., of, &c., to be the gdian of them respby after my death & the death or refusal to act of the sd B., durg their respive minorities. IN WITS, &c.

XVII.**APPOINTMENT** *under seal of a GUARDIAN by an
INFANT (b).*Appoint-
ment.

KNOW, &c., that I, A., an infant of the age of — yrs, eldest son of B., late of, &c., deced, hby elect & appt my uncle C., of, &c., to be gdian of my pson & este until I shl attn the age of 21 yrs. IN WITS, &c.

Appoint-
ment of
guardian
by infant
father.

(a) An infant father, though now incapacitated from making a will, can appoint guardians by deed, 12 Car. 2, c. 24, s. 8; but the appointment must be subject to the rights conferred on the mother by the Guardianship of Infants Act, 1886, 49 & 50 Vict., c. 27, ss. 2 and 3. The execution should be attested by two witnesses; but *qu.*, see *Morgan v. Hatchell*, 19 Beav. 86. As to the right of a father to determine the religion in which his children shall be brought up after his death, see *Re Scanlan*, 40 Ch. D. 200; *Re Nevin*, [1891] 2 Ch. 299; *Re McGrath*, [1892] 2 Ch. 496; [1893] 1 Ch. 143.

(b) See Simpson on Infants, p. 212.

XVIII.

APPOINTMENT of a GAMEKEEPER by a LORD of a MANOR (c).

KNOW, &c., that I, A., of, &c., lord of the manor of —, in the coy of —, do hby (by virtue of the statute in that behalf) appt & depute B., of, &c., to be my gamekeeper within the sd manor durg my pleasure, & to preserve the game within the limits of the sd manor: AND I hby give him full power & authority [to kill the game within the limits of the sd manor for my use, *or*, “for his own use, or for the use of any other pson or psons whomsr,” And also] to seize & take within the sd limits for my use, *or*, “for his own use,” &c., all such dogs, nets, & other engines & instrumts for the killg & takg of game as shl be used upon the sd lands by any pson not authorised to kill game for want of a game licence, AND further to do & exte all acts & things wch may be requisite for the preservon of the game within the sd manor, & for the discovery of offenders thrin, accdg to the laws of this realm, & for wch this shl be his sufft warrant. IN WITS, &c.

Appointment.

Power to kill game and seize engines, &c.

XIX.

APPOINTMENT of a PARISH CLERK (d).

KNOW, &c., that I, the Rev. A., vicar, [*or*, rector] of the parish church of —, in the coy of —, do hby nominate &

(c) See 1 & 2 Will. 4, c. 32, ss. 13, 14, 16, and as to Wales, s. 15; the appointment must be registered with the Clerk of the Peace for the county or place within which the manor is situate (s. 16). As to game licences, see 23 & 24 Vict. c. 90; as to licences to carry a gun, see 33 & 34 Vict. c. 57, ss. 1—5. As to the right of an occupier to kill ground game, see the Ground Game Act, 1880, 43 & 44 Vict. c. 47.

(d) As to Parish Clerks, see Stephen's Comm., vol. ii., p. 713. A mandamus lies to a rector to appoint a parish clerk, *Rex v. St. Anne's, Soho*, 3 Burr. 1877; and to restore a parish clerk, but not a deputy parish clerk, to his office, *Rex v. Warren*, Cowp. 370, *Anon.*, Lofft, 434. It is therefore not unusual for an incumbent to appoint some friend as parish clerk, and for the latter to appoint a deputy, who performs the duties of the office and who can be removed at any time. As to the right to appoint during a sequestration, see *Lawrence v. Edwards*, [1891] 1 Ch. 144.

Appoint-
ment.

Fees.

appt B., of, &c., to be parish clerk of the sd parish church [in the room of C., deced], to have & exte the sd office by himself, [his deputy or deputies] durg the term of his life, & durg the same time to rece & take all such wages, fines, fees, dues, profits, & emolumts as belong, & are, & shl be due to the sd office, & of rt ought to belong to the same in as full & ample a mner as [the sd C. or] any of his predecessors, clerks of the sd parish church, have had or ought to have had as due & of rt accustomed. In wits, &c.

APPOINTMENTS OF NEW TRUSTEES.

PRELIMINARY NOTE.

The power of appointing new trustees contained in Lord Cranworth's Act (23 & 24 Vict. c. 145, s. 27), was repealed by the Conv. Act, 1881 (44 & 45 Vict. c. 41), and by s. 31, re-enacted with amendments. This section was itself repealed by the Trustee Act, 1893 (56 & 57 Vict. c. 53), and re-enacted, s. 10. The power under the Trustee Act, 1893, applies to the case of a trustee dying (expressly including (sub-s. 4) in the case of a will, death in the testator's lifetime), remaining out of the United Kingdom for more than twelve months (a case not provided for by Lord Cranworth's Act) (*Re Stamford*, 40 Sol. J. 114), desiring to be discharged, or refusing or being unfit or incapable to act. The power is vested in the person or persons, if any, nominated for the purpose by the instrument, if able and willing to act, or otherwise in the surviving or continuing trustees or trustee (which by sub-s. 4 includes a refusing or retiring trustee if willing to act, differing in this respect from Lord Cranworth's Act), or the personal representatives of the last surviving or continuing trustee. The statutory power applies, although the deceased or outgoing trustee was appointed by the Court (s. 10, sub-s. 1); and by s. 37 trustees appointed by the Court (whether before or after the Act) have all the same powers (including of course the powers of s. 10) as if they had been originally appointed by the instrument creating the trust.

Statutory provisions as to appointments of new trustees; Conv. Act, 1881, s. 31; Trustee Act, 1893.

The Act provides (s. 10, sub-s. 2, which provision was not in Lord Cranworth's Act) that on an appointment being made the number of trustees may be increased or reduced, but not to less than two unless only one trustee was originally appointed.

Increase or reduction in number.

It is further provided (by s. 11, which provision also was not in Lord Cranworth's Act), that, where there are more than two trustees, one of them may, with the consent of his co-trustees and the person empowered to appoint new trustees, be discharged by deed without the appointment of a new trustee in his place.

All the above provisions are to apply to instruments executed before as well as since the Act (except so far as they are excluded or varied by the terms of the instrument); but the repeal (by the Conv. Act, 1881, s. 71) of the clause in Lord Cranworth's Act is not to affect the operation of instruments executed before the Conv. Act, 1881. In the case of a settlement or will executed before 1882, and incorporating wholly or partially, and whether by express reference or not, the power in Lord Cranworth's Act, the new enactments will apply as supplemental to the former, if and so far as there is nothing in the terms of the instrument inconsistent with such application, so as to enable a new trustee to be appointed in place of one who has gone to reside abroad (*Re Walker*, 24

Operation of Act on previous instruments.

Ch. D. 698, where the persons nominated by the settlement, in 1878, to appoint new trustees, were held to be the proper persons to exercise the power of the Act of 1881; *Re Coates*, 34 Ch. D. 370), or the number of trustees to be increased or reduced, or a trustee to be discharged without appointing a new one in his place; and the statutory provisions will also operate by way of extension of an express power contained in the instrument in the absence of an indication of a contrary intention (*Cecil v. Langdon*, 28 Ch. D. 1; *Re Coates*, *ubi sup.*); and the statutory power has been held to be free from a fetter as regards consents imposed by the express power (*Cecil v. Langdon*, *ubi sup.*), or by special Act of Parliament (*Re Lloyd*, 32 Sol. J. 221), and to be exercisable where a husband and wife, joint donees of an express power, were living apart and unable to agree as to the appointment (*Re Sheppard*, W. N. 1888, 234).

Case of
concurrent
powers of
appoint-
ment.

The saving clause in s. 71 of the Act of 1881, by which the repeal of the power in Lord Cranworth's Act is not to affect the operation of instruments executed before the repeal, seems to keep alive that power in cases in which it had been incorporated expressly or by implication in previous instruments, and if so an appointment of new trustees ought in such case to be made under the repealed clause, and not under the new one, even where they are concurrent, but some practitioners (it is believed) hold the contrary view. It is better in all cases to refer to the statutory power in general terms as follows "to the statute in that behalf."

Case of
trustees
predeceas-
ing tes-
tator.

Although the statutory power (as well as the ordinary express power) provides for the case of a trustee of a will predeceasing the testator, and in case of the death of all the trustees is exercisable by the personal representatives of the last survivor, it seems doubtful whether it would be available in case all the trustees should predecease the testator (*Re Orde*, 24 Ch. D. 271; but see *Re Ambler*, 32 S. J. 541; 59 Law T. 210; *Nicholson v. Field*, [1893] 2 Ch. D. 511). A disclaiming trustee is conceived to be undoubtedly a refusing trustee within the statutory or the ordinary express power, although by the effect of the disclaimer he technically never became a trustee; see Lewin on Trusts, 738. As to a trustee becoming bankrupt, see the Bankruptcy Act, 1883, s. 147, now repealed by the Trustee Act, 1893, and replaced by s. 25. The statutory power, which includes "unfitness," would usually be available in case of bankruptcy (*Re Adams*, 12 Ch. D. 634).

Trustee
disclaim-
ing,
or becom-
ing bank-
rupt,

But the provisions of the Act do not enable a new trustee to be appointed in the place of an infant (*Re Tallatore*, [1885] W. N. 191), though such an appointment can be made by the Court (*Re Skelmerdine*, 33 L. J. Ch. 474; *Re Brunt* [1883], W. N. 220).

or lunatic.

In the case of a lunatic trustee (whether so found or not), where there is no available express power, a new trustee may be appointed by the continuing trustees under s. 10 of the Trustee Act, 1893; and a vesting declaration may be made under s. 12 of that Act if applicable (*Re Blake*, W. N. 1887, p. 173); or a new trustee may be appointed and a vesting order made by the Judge in Lunacy under the Lunacy Act, 1890 (53 Vict. c. 5), ss. 135, *et seq.*, or by the lunatic acting by his committee under an order in the lunacy, Lunacy Act, 1890, ss. 128, 129, and the Trustee Act, 1893, s. 40. By the Act of 1890 (s. 342) the corresponding provisions of the Trustee Acts, 1850 and 1852, have been repealed (except as to Ireland); and by the Trustee Act of 1893, s. 140 of the Act of 1890 has been repealed and replaced by s. 40; see also the definition of "land" in s. 341 of the Act of 1890, and of "seised" and "possessed," in the Lunacy Act, 1891 (54 & 55 Vict. c. 65), s. 28. The

general power of appointing new trustees in Chancery under the Trustee Act, 1893, s. 25, is also available, if need be. The Court can make an order under this section where the trustee is incapable of acting through age or infirmity (as in *Re Lemann*, 22 Ch. D. 633; *Re Barber*, 39 Ch. D. 137). As to making a vesting order without appointing a new trustee, see *Re Leon*, [1892] 1 Ch. 348, *infra*, p. 103. As to the case of the donee or one of the donees of the power of appointment being lunatic, see *infra*, p. 102.

Where the power of appointment is vested in the continuing trustees, a retiring or refusing trustee is not a continuing trustee within the meaning of the power, and need not join in the appointment (*Re Norris*, 27 Ch. D. 333; *Re Coates*, 34 Ch. D. 370, following *Travis v. Illingworth*, 2 Dr. & Sm. 344, and dissenting from dicta in *Re Glenny*, 25 Ch. D. 611); and a lunatic (*Re Blake*, W. N. 1887, p. 173) or bankrupt trustee whose place is to be filled is in the same position. But a retiring trustee would, of course, usually be a party to signify his desire to retire. Where the power provides (as in the Trustee Act, 1893, s. 10 (4)) that a continuing trustee shall be deemed to include a retiring or refusing trustee if willing to join, an appointment in place of a trustee who has been abroad for more than twelve months without his concurrence will be *prima facie* good (*Re Coates*, 34 Ch. D. 370); and it would seem that a trustee who is displaced on the ground of absence abroad is not a "retiring" trustee at all, as it is immaterial whether he consents to retire or not, so that the appointment would not be invalidated by proof that he was competent and willing to join. The provision enabling a retiring trustee to appoint is useful on the retirement of a sole trustee or of all the trustees simultaneously, as it enables the appointment to be made without the circuitry of two deeds, which would otherwise be necessary. A power given (as in the Acts of 1881 and 1893) to the personal representatives of the last surviving or continuing trustee is exercisable by the representatives of a sole trustee (*Re Shafto*, 29 Ch. D. 247). The representatives of a deceased trustee are of course not bound to exercise such a power, and may reasonably refuse to assume the responsibility of so doing, and will not be chargeable with the costs occasioned by their refusal (*Re Knight*, 26 Ch. D. 82); if they do make the appointment, it is desirable to get the principal beneficiaries to join in the deed to testify their approval. The representatives can exercise the power before probate. It is doubtful whether special executors of trust estates can exercise the power (*Re Parkes' Trust*, [1894] 1 Ch. 701).

Appoint-
ment by
retiring or
refusing
trustee.

By repre-
sentatives
of deceased
trustee.

Trusts and powers in settlements and wills are frequently expressly continued to the representatives (real or personal as the case may be) of the last surviving trustee; and even where a trust is vested in the "trustees or trustee for the time being" (*Re Morton*, 15 Ch. D. 143) or in "the acting trustees" (*Re Cunningham*, [1891] 2 Ch. 567), it may be executed by the heirs of the survivor on his death before 1882; but although in such a case the representatives may be enabled to execute the trusts partially or even wholly, this does not of course constitute them trustees of the instrument except in a limited sense (see as to this Lewin on Trusts, p. 534; Dart, V. & P., p. 682, so that new trustees in that case must be appointed in the place of the deceased trustees, and not of the representatives of the last survivor of them).

Represent-
atives of
last sur-
viving
trustee,—
to what
extent
trustees.

Where the donee of the power of appointment or consenting to the appointment is a lunatic so found, the power of appointment (if it is vested in the lunatic in the character of a trustee or guardian), or of consenting to the appointment, may be exercised by the committee by the authority of an

Donee of
power of
appointing
or consent-
ing of

unsound
mind.

order of the Judge in Lunacy under the Lunacy Act, 1890, ss. 128, 129 (see *Re Shortridge*, [1895] 1 Ch. 278); and if the donee of the power is a trustee, a vesting order may be made under s. 129, or ss. 135—139. The appointment may also (where a vesting order is required and can be made under the Act) be made by the Judge in Lunacy under s. 141, which applies whether the lunatic has been so found or not (see ss. 129 and 135—139, and the definition of "lunatic" in s. 341); and would be available where one of several trustees donees of the power is lunatic. The general powers of making appointments and vesting orders contained in the Trustee Act, 1893, ss. 25, 26, may also be had recourse to if applicable (see as to the jurisdiction above, p. 101 *et seq.*). And where there is an express power, but it is not available, the appointment may admit of being made under the Trustee Act, 1893, s. 10; see *Cecil v. Langdon*, 28 Ch. D. 1; *Re Sheppard*, W. N. 1888, 234.

Power not
affected by
alienation
of interest.

Where the power of appointing or consenting to the appointment of new trustees is vested in the tenant for life or other beneficiary, it is not affected by the alienation (whether partial or total) of his interest, and is exercisable without the consent of the alienee: *Hardaker v. Moorhouse*, 26 Ch. D. 417.

Effect of
action for
adminis-
tration.

The pendency of an action for administration of the trusts under the Court does not displace the power, but after a decree or order for administration has been made it can only be exercised subject to the approval of the Court (*Re Gadd*, 23 Ch. D. 134; *Thomas v. Williams*, 24 Ch. D. 558; *Re Norris*, 27 Ch. D. 333); except in the case of an old suit or action, which, though technically alive, is practically at an end. Where there is no action, the exercise of the power cannot be interfered with by the Court under the powers of the Trustee Act, 1893, or otherwise (*Re Higginbottom*, [1892] 3 Ch. 132).

Whoshould
be ap-
pointed.

Under the ordinary express or the statutory power there is of course no invalidity in the appointment of one of the beneficiaries, or a female, or a person living abroad, although such an appointment would not in general be made by the Court. As to the appointment by the Court of a person resident abroad, see *Re Freeman*, 37 Ch. D. 148; and of a beneficiary who is also a donee of the power, see *Tempest v. Lord Camoys*, W. N. 1888, p. 17. The donee of the power cannot appoint himself (*Re Skeats*, 42 Ch. D. 522; *Re Newen*, [1894] 2 Ch. 297). As to the appointment by the Court of the nominees of a company, who guarantee the due performance of the trusts, see *Re Brogden*, W. N. 1888, p. 238.

Increase or
reduction
in number
of trustees.

Although the power usually authorises the number of trustees to be increased on an appointment, and this is expressly provided for by the statute, the number cannot (in the absence of express authority, which is rarely given, and is not given by the statute) be increased by appointing an additional trustee except on an appointment to fill a vacancy (*Re Gregson*, 34 Ch. D. 209), so that this could only be effected by the circuitry of two deeds; but the Court has jurisdiction to make such an appointment (*Re Brackenbury*, 10 Eq. 45; *Re Gregson*, *ubi sup.*). A reduction in the number may also usually be effected either on the occasion of an appointment to fill a vacancy (whether under the statutory or ordinary express power), or by the retirement of a trustee without a fresh appointment (under s. 11 of the Act of 1893); and although it would not of course usually be proper to reduce the number below two, and under the statutory power this could not usually be done (see above), under an express power worded in the ordinary form such a reduction would not invalidate the appointment (see *West of*

England Bank v. Murch, 23 Ch. D. 138). Although orders to the contrary have been made in some cases, the more recent practice of the Court has been not to remove a lunatic, bankrupt, or absconding trustee by appointing the other trustees to be trustees to his exclusion; the more proper course being to keep up the number by appointing a new trustee in his place (*Re Aston*, 23 Ch. D. 217; *Re Lamb*, 28 Ch. D. 77; *Re Gardiner*, 33 Ch. D. 590); *secus*, where the whole fund is immediately distributable (*Re Martyn*, 26 Ch. D. 745); and where the trusts are being administered by the Court and the funds when received by the trustees are to be paid into Court (*Davies v. Hodgson*, 32 Ch. D. 225); and under the Lunacy Act, 1890, 53 Vict., c. 5, ss. 135, 136, a vesting order was made where there were four trustees without appointing a new one; *Re Leon*, [1892] 1 Ch. 348.

By the Trustee Act, 1893, s. 10 (2) (re-enacting the 5th section of Conv. Act, 1882) (which also applies to trusts previously created), it is provided that on an appointment of new trustees the trusts may be severed by the appointment of separate trustees for any part of the trust property held on distinct trusts; and this applies although in a certain event the trusts may coalesce (*Re Hetherington*, 34 Ch. D. 211). It was held that new trustees could not be appointed under that enactment as to a part of the property, unless an appointment was made at the same time of new trustees of the other part (*Savile v. Couper*, 36 Ch. D. 520; *Re Nesbitt*, 19 L. R. Ir. 509; contrary to the opinion expressed in *Re Paine*, 28 Ch. D. 725); but by the Conv. Act, 1892, 55 & 56 Vict., c. 13, s. 6, repealed by the Trustee Act, and re-enacted by s. 10 (2), the Act has been extended so as to enable this to be done. The Court possessed jurisdiction in this respect under the Trustee Act, 1850, s. 32 (*Re Moss*, 37 Ch. D. 513), now replaced by the Trustee Act, 1893, s. 25 (1).

Appoint-
ment of
separate
trustees
for part of
the trust
property
held on
distinct
trusts.

Where by the Settled Land Act, 1882 (45 & 46 Vict., c. 38), s. 2 (8), or (in the case of a settlement by way of trust for sale), by s. 63 (1), the trustees are also made trustees for the purposes of the Act, newly appointed trustees will necessarily, by virtue of the appointment, become trustees for the purposes of the Act without the insertion of any express words to that effect in the appointment (see the Trustee Act, 1890, s. 10 (2), (3), re-enacting the Conv. Act, 1881, s. 31 (5). In *Re Wilcock*, 34 Ch. D. 508, it was doubted whether the power of appointing new trustees in the Conv. Act, 1881, s. 31, applied to trustees appointed by the Court under the Settled Land Act, s. 38. Having regard to ss. 31 (1, 5) and 33 of the Conv. Act, 1881 (see above), and to the definition in s. 2 of the word "instrument" as including "Act of Parliament," it is difficult to see that there was any ground for this doubt; but it has now been removed by the Trustee Act, 1893, s. 47, re-enacting the Settled Land Act, 1890 (53 & 54 Vict., c. 69), s. 17, enacting that all the powers and provisions of the Act, as to the appointment of new trustees and the discharge and retirement of trustees are to apply to trustees for the purposes of the Settled Land Acts, 1882 to 1890, whether appointed by the Court or not.

Trustees
for the
purposes
of the Set-
tled Land
Act, 1882.

The Trustee Act, 1893, s. 12, re-enacting the Conv. Act, 1881, s. 34, enables the appointor upon the appointment of a new trustee to make a declaration operating to vest the trust estate in the continuing and new trustees without any conveyance or assignment; and provides that the like declaration may be made by the retiring and continuing trustees and the person empowered to appoint new trustees, where a trustee is discharged under s. 11 without appointing a new trustee in his place.

Clause
enabling
trust es-
tate to be
vested by
declara-
tion.

Vesting
declara-
tion, how
far appli-
cable.

This enactment applies to "any estate or interest in land" (as that word is defined in section 50), or "in any chattel," and "the right to recover and receive any debt or other thing in action"; but by sub-s. 3 does not extend to the legal estate in copyholds, or to legal mortgages, or to shares, stock, &c., transferable only in books kept by a company or other body, or in manner prescribed by Act of Parliament.

What may
be included
therein.

Although it would have been better if the property as to which a vesting declaration may be made had been described by a short form of words of the most sweeping and general import, comprising real and personal estate of every description, and not depending on a definition (with the necessary exceptions), the expressions used in the Act are sufficiently comprehensive, since they include land of every tenure (except the legal estate in copyholds and in mortgaged land) and incorporeal hereditaments; chattels personal, such as furniture and heirlooms; legal debts and choses in action, such as gross and annual sums secured by bond or covenant (including a debt secured by mortgage, although the legal estate in the land cannot be vested under the Act), and policies of assurance; equitable choses in action, such as a reversionary interest in personalty, a share of a residuary estate, or a merely equitable interest in a mortgage (where the security is legally vested in third parties, as in the case of a contributory mortgage), or an equitable mortgage (the legal estate being outstanding in a prior mortgagee or otherwise). As regards equitable interests, although a formal conveyance or assignment is usual, especially in the case of real estate, there is no absolute necessity for it, as the right passes to the new trustees by virtue of their appointment. Shares, stocks, and debentures, &c., of companies and public bodies must be transferred in the usual way. Securities "to bearer" must of course be transferred by actual delivery, and should be deposited in a bank or otherwise so as to be under the joint legal control of all the trustees.

Cases
where
declara-
tion con-
tains only
a general
descrip-
tion.

Where the property is vested by a declaration containing only a general description, it may be convenient to some extent to follow the language of the Act in the description, except that (a caution which the writer has found to be by no means superfluous) the draftsman must beware of using the word "land" alone as descriptive of hereditaments, since that word would not of course in a deed have the comprehensive import which is given to it in the Act (s. 50).

Vesting
declaration
where out-
going trust-
ee under
incapacity
or absent.

The means of vesting the trust estate by declaration is specially valuable where the outgoing trustee is under incapacity or absent; but it would have been more so if, instead of excepting copyholds, the clause had enabled the appointor to convey them, or to nominate some other person to do so, by analogy to the Trustee Act, 1850; and if the exception of mortgages had also been omitted. The latter exception was evidently inserted with reference to the practice of taking and transferring mortgages to trustees without disclosing the trust; but there was no need for the exception, as it is in the option of the appointor to use the Act or not; and there is no apparent reason why he should not have the power to do so in this case, especially as a vesting order under the Trustee Act necessarily discloses the trust. These two exceptions necessitate applications to the Court for vesting orders where they might have been saved; but the exception of stocks and shares, &c., appears to be inevitable, as an order of the Court could scarcely, with safety, be dispensed with in those cases.

Cases
where new

An order vesting the trust estate or appointing a person to convey or transfer it may be made in case of lunacy under the Lunacy Act, 1890

(see above, p. 102), where a new trustee has been previously appointed by deed (*Re Vicat*, 33 Ch. D. 103; *Re Jones*, *ib.*, 414; *Re Batho*, 39 Ch. D. 189, where two new trustees had been appointed in place of one lunatic and another abroad, cases decided under the repealed sections of the Trustee Act, 1850); and this may be made available in the case of mortgages or copyholds or stocks which cannot be vested by declaration under the Conv. Act. But under s. 26 of the Trustee Act, enabling such orders to be made in Chancery on an appointment of new trustees by the Court, there is no jurisdiction to do so where the trustee has already been validly appointed by deed, and the Court will not reappoint the trustee in order to lay a foundation for making a vesting order; *Re Vicat*, 33 Ch. D. 103; *Re Dewhirst*, 33 Ch. D. 416, overruling *Re Dalgleish*, 4 Ch. D. 143; and see *Re Batho*, 39 Ch. D. 189. This may possibly in some cases cause difficulty.

trustee has been previously appointed by deed.

The power to vest the trust estate by declaration is also valuable in the following cases:—where the trustees are all dead, and there is no representative of the last surviving trustee, or his concurrence cannot be obtained; where all the trustees have disclaimed; and where (as sometimes happens) the legal estate has not been properly conveyed on a former appointment of trustees, in which case, although the vesting declaration must be contained in the same deed as the appointment, there seems no reason why it should not be efficaciously made on a subsequent appointment. As to the form of order of Court vesting the legal estate in land where there is no representative of the surviving trustee, having regard to s. 10 of the Trustee Act, 1893, see *Re Pilling*, 26 Ch. D. 432; *Re Williams*, 36 Ch. D. 231; which may serve as a guide for framing a vesting declaration in the like case.

Other cases where vesting declaration useful.

The vesting of the trust estate by declaration may also occasionally be usefully adopted where a married woman is a trustee, to save the expense of acknowledgment, the provision in the V. and P. Act, 1874, 37 & 38 Vict., c. 78, s. 6, repealed and re-enacted by the Trustee Act, 1893, s. 16, enabling a married woman to convey trust estates as if she were sole, applying only where she is a bare trustee (as to which see *Christie v. Ovington*, 1 Ch. D. 279; *Morgan v. Swansea, &c.*, *Authority*, 9 Ch. D. 582; *Re Docwra*, 29 Ch. D. 693; *Re Cunningham*, [1891] 2 Ch. 567; and see the use of the expression "bare trustee" in the Charitable Trusts Act, 1853, 16 & 17 Vict. c. 137, s. 50); and it is doubtful whether the case is altered by the Married Women's Property Act, 1882, 45 & 46 Vict., c. 75, as until it has been so decided it cannot be treated as clear that that Act applies to land vested in a married woman as a trustee.

Case of trustee being a married woman.

The vesting declaration must be contained in the *same* deed by which the new trustee is appointed, or the retiring trustee is discharged under s. 11 of the Trustee Act, 1893, repealing and re-enacting the Conv. Act, 1881, s. 32; but in the latter case the property can be vested by conveyance, as the retiring and continuing trustees must all be parties to the deed. The declaration is to vest the property in "the persons who by virtue of the deed become and are the trustees for performing the trust," as joint tenants.

Vesting declaration must be contained in the same deed.

The vesting declaration has so much advantage in point of simplicity, brevity, and adaptability to various cases over a conveyance of the trust estate in the old form, that it has come into considerable use in practice in preference to the other method.

As to use of vesting declaration in practice.

In construing the above enactments in the Conv. Acts, it must, of course, be borne in mind that by the Interpretation Act, 1889 (52 & 53 Vict., c.

63), s. 1, in these Acts, as in all Acts passed after 1850, the singular includes the plural, and *vice versa*, unless a contrary intention appear.

As to the appointment of new trustees of land held in trust for religious or educational purposes, see the Trustees Appointment Acts, 1850 to 1890, namely, 13 & 14 Vict. c. 28 (Peto's Act), 32 & 33 Vict., c. 26, and 53 & 54 Vict. c. 19, by s. 3 of which the power of appointment contained in any other Statute for the time being in force is made applicable.

As to the appointment of new trustees on summons see R. S. C., Order 55, rule 13A.

Trustee
retiring
where
breach of
trust con-
templated.

As to the responsibility of a trustee who retires with the knowledge that his retirement is likely to be followed by a breach of trust, see Lewin, 752, and cases there referred to; and as to the duty of an incoming trustee to see that the trust estate is in a proper state of investment, see Lewin, 217; and as to his freedom from responsibility in respect of incumbrances affecting the trust estate which are not disclosed to him, though known to the retiring trustee, see *Hallows v. Lloyd*, 39 Ch. D. 686.

Stamps.

As to the stamp duty on appointments of new trustees, see the Stamp Act, 1891, Sched. tit. APPOINTMENT; *Hadgett v. The Commissioners, &c.*, 3 Ex. D. 46; 4 Dav. Prec., 609.

Costs of
appoint-
ment.

As to the costs of the appointment, see *Harvey v. Olliver*, W. N. 1887, p. 149; 31 Sol. J. 640.

See further as to appointments of new trustees, Lewin on Trusts, 728 *et seq.*; 4 Dav. Prec. 605 *et seq.*; Elph. Introd. p. 484.

CLAUSES.

Appoint-
ment of
trustee
where the
power is
contained
in the set-
tlement or
will, with
variations.

I. IN EXERCISE of the power for this ppose by the hinbfe recited indre of the — day of —, or, “by the within written indre,” or, “ppl indre,” or, “by the hinbfe recited will of the sd X.,” given to the sd, *donee or donees of power*, & of every or any other power enabl^g him [them] in this behalf he the sd, *donee*, doth [they the sd, *donees*, do] hby (a) appt the sd, *new tree or trees*, to be a tree [trees] in the place of the sd, *deced or outgoing tree or trees*, for the pposes of the sd indre of the — day of —, or, “the within written indre,” or, “the sd will [& codls] of the sd X.,” or such of the same pposes as may be subsistg and capable of takg effect.

Appoint-
ment of

II. IN EXERCISE of the power for this ppose by the statute in

(a) If the consent of any person is required to the appointment, add here “with the consent (hby testified) of the sd *consentg pty or pties*.”

that behalf or, if the statutory power is exply incorpd with or witht varion in the instrumt creatg the trust, "by the jt operon of the settlemt or will, & "the statute in that behalf" given to the sd, donee or donees of power, & of every, &c., as in last form.

trustee under statutory power (b).

III. IN EXERCISE, &c., as above form I. or II., he the sd, donee, doth [they the sd, donees, do] hby appt the sd, new tree or trees, to be a tree [trees] in the place of the sd, deced or outgoing tree or trees, for all the pposes for wch the sd, deced or outgoing tree or trees, was [were] appted a tree [trees] by the sd, settlemt or will, or as the case may be, or such, &c., as in form I.

Appointment where more than one set of trustees.

IV. The sd A. & B., apptors, hby declare that all & singr the hds, revy intts, pols, things in action, chattels, effects, & ppty specified in the schdle hto, & the rt to rece & recover all such things in action, or as the case may be, & all other (if any) hds, chattels, & ppty, whether real or psonal (includg things in action, & the rt to rece & recover the same), wch are now subjt to the trusts of the sd indre of settlemt of, &c., or, "the sd will & codls of the sd X.," (not being a legal este or intt in copyhd or customary lands or hds, & not being lands or hds vested in the sd, outgoing & continug trees, or any of them, by way of mtge for securg moy subjt to the sd trusts) shl vest in the sd, continug & new trees, their hrs, exs, ads, & assns resply (accdg to the nature of the ppty), as jt tenants for all such este & intt as the sd, outgoing & continug trees, or any of them had thrin resply immedly bfe the exon of these psnts, & upon the trusts & subjt to the powers & provons applicable thto resply by virtue of the sd indre of settlemt, or, "will & codls," or orwise.

Declaration vesting trust estate (c).

V. AND IT IS HBY agrd & decld that the sd, new & continug (if any) trees, their [hrs] (e), exs, ads, & assns, shl hold the sd, stks, shares, &c. [when the same shl have been transferred

Declaration of trust (d).

(b) See above, p. 99.

(c) See p. 103 *et seq.*; and for a form where a trustee retires without a new trustee being appointed under the Trustee Act, 1893, s. 11, see *infra*, p. 129.

(d) This clause though usual is of course not necessary, as the trustees must necessarily hold the property upon the trusts whether they so declare or not. The declaration if amounting to a covenant (see *Isaacson v. Harwood*, As to declaration of trust.

(e) See note (a) next page.

into their names], *or*, "all & singr the sd — & premes [when the assurse & transfer thof shl have been made to them as afsd]" upon the trusts & subjt to the powers & provons applicable thto [or upon, & subjt to wch the same ought to be held] by virtue of the sd indre of the — day of —, *or*, "will [& codls] of the sd X." *or orwise*.

Power for
solicitor-
trustee to
charge

VI. AND THE sd *tenant-for-life* doth hby covt with the sd *solor-tree* that he, the sd *solor-tree* shl be entled to make & rece, & that the sd *tenant-for-life*, his hrs, exs, or ads, will pay or procure to be pd to the sd *solor-tree* all such chges & emolumts for business done by him in relon to the exon of the trusts of the within written indre, as he wd have been entled to make & rece in respt thof, if he had not been a tree (b)].

PRECEDENTS.

I.

APPOINTMENT, *by the surviving* TENANT *for* LIFE *of*
a Settlement of MONEY in the funds, of NEW TRUSTEES
in the place of deceased or retiring trustees, the
CHANGES *of* INVESTMENT *and other dealings with the*
trust-funds not being fully recited (endorsed on the
SETTLEMENT) (c).

THIS INDRE, made, &c., BETN A., of, &c., widow, formerly
B. within named, 1; C., *retirg tree*, 2; D., *continug tree*, 3;
Recitals. E. & F., *new trees*, 4. WHAS a marre betn the within named

3 Ch. 225), and the deed is executed by the trustees (*Richardson v. Jenkins*, 1 Dr. 477), would create a specialty debt in an action for breach of trust, so as to improve the remedy against them, having regard to the Trustee Act, 1888, s. 8; but this is of small moment.

Word
"heirs,"
when re-
quired.

(a) By the effect of the Conv. Act, 1881, s. 30, as modified by the Copyhold Act, 1894, s. 88, the word "hrs" is not required except in the case of copyholds to which the trustees have been admitted.

(b) As to the right of a solicitor-trustee to charge, see *infra*, SETTLEMENTS. Of course this is a mere personal covenant of the covenantor and does not affect the other *cestui que trusts*.

(c) It is desirable that the deed should be executed by the new trustee to signify his acceptance of the office. As to the consent of a new trustee to act where the appointment is made by the Court, see R. S. C., Order 38,

K. & B., now A. was duly solemnised shortly after the exon of the within written indre: AND WHAS the sd K. died on the — day of —; AND WHAS divers changes in the investmt of & other dealgs with the trust-funds comprd in or subj to the trusts of the within written indre have from time to time taken place, & portions thof have been applied or disposed of for the advancemt of chn of the sd marre, & orwise, psuant to the trusts & powers of the sd indre, & the trust-funds now remaing subj to the subsistg trusts thof consist of the sum of £—— 2 $\frac{3}{4}$ p.c. Consold Stk, & £—— Deb. Stk of the — Rly Co.: AND WHAS the within named L., *deced tree*, died on the — day of —: AND WHAS the sd C. is desirous of being dischged from the trusts of the within written indre: AND WHAS the sd A. is desirous of apptg the said E. & F. to be trees of the same indre in the place of the sd L. & C.: AND WHAS the sd respive sums of stk are intd to be forthwith transferred by the sd C. & D. into the jt names of the sd D., E., & F. (d). NOW THIS INDRE WITNETH that in exercise, &c., *appt by A. of E. & F. as new trees in place of L. & C.*, p. 106, *Declon of trust*, p. 107. IN WITS, &c. (e).

Marriage.

Death of husband.

Present state of trust-funds.

Death of trustee.

Desire to retire.

Desire to appoint.

Funds to be transferred.

Appointment.

II.

APPOINTMENT *by SURVIVING TRUSTEES, with the consent of the HUSBAND and WIFE, of a NEW TRUSTEE in the pluce of a DECEASED TRUSTEE of a settlement of PERSONALTY, consisting of a REVERSIONARY interest in STOCK, receivable on the death of the wife's father, an ANNUITY covenanted to be paid by the latter during his life, and a sum secured by the BOND or COVENANT, and*

r. 19A. For variations where the deed is supplemental to the settlement instead of being endorsed, see above, p. 71, note; and below, Precedent VII.; as to various points of law and practice, see note above, p. 99.

(d) The transfer of the funds ought not in strict propriety to be made till after the appointment, but is sometimes made before.

(e) Where special formalities of execution are prescribed by the power, the deed may be executed according to such formalities, or in the presence of two witnesses in the ordinary mode, see 22 & 23 Vict., c. 35, s. 12. Neglect of this may invalidate the appointment.

Special formalities.

a POLICY on the life of the HUSBAND. There having been a prior endorsed appointment of a NEW TRUSTEE. ASSIGNMENT of the trust property by the SURVIVING TRUSTEE to HIMSELF and the NEW TRUSTEE (a). (Endorsed on the settlement.)

Recitals.
Death of trustee.
Wife's father living.
Desire to appoint.
Appointment.
Assignment.

PARTIES, the above named K., the tree appted by the prior endorsed deed, 1; the within named A., & B. his wife, formerly C. within named, 2; L., new tree, 3. WHAS the within named H., deced tree, died on the — day of —: AND WHAS the within named X., wife's father, is still livg: AND WHAS the sd K., with the consent of the sd A. & B., is desirous of apptg the sd L. to be a tree of the within written indre in the place of the sd H.: NOW THIS INDRE WITNETH that in exercise, &c., apptmt by K., with consent of A. & B. of L. as tree in the place of H., p. 106: AND THIS INDRE ALSO WITNETH that in psuance of the sd apptmt, the sd K., as tree (b), with

As to form of conveyance of trust estate where there is a continuing trustee.

(a) By 22 & 23 Vict., c. 35, s. 21. leaseholds and personalty (other than legal choses in action) were made assignable by a person to himself jointly with another or others, so as to dispense with the necessity (which arose from the rule that a person could not convey to himself) for employing two deeds (an assignment to a provisional trustee and a re-assignment by him), in order to vest property of that description on the appointment of a new trustee, where there was a continuing trustee. A similar enactment is contained in the Conv. Act, 1881, s. 50, as to freeholds and things in action. The difficulty was previously got over in the case of freeholds by the aid of the Statute of Uses, but the late Act renders it unnecessary in future to have recourse to that machinery; and this assimilation of the form of conveying realty to that of personalty often enables the two to be conveniently combined in one clause. The alternative mode of vesting the trust estate by the declaration of the appointor might be used in this case; see above, p. 103, and form iv., p. 107.

As to implied covenant against incumbrances.

(b) The covenant against incumbrances by the conveying parties, which it was usual to insert in the conveyance of the trust estate, is now implied by making them convey as trustees (see the Conv. Act, 1881, s. 7, sub-s. 1, F., and CONVEYANCES ON SALE), whether in a conveyance of freeholds, leaseholds, or personalty, or (having regard to the definition of "conveyance," and "convey" in s. 2) a covenant to surrender copyholds. In the common case of there being a continuing trustee, there is a formal objection to using the Act, as the statutory covenant is with all the grantees jointly (see the first paragraph of s. 7), so that the continuing trustee would be both a covenantor and covenantee; but this is disregarded in practice, the covenant being at the best of little or no value. In this work the words implying statutory covenants for title, &c., under the Conv. Act, 1881, s. 7, namely, "as beneficial owner," "as trustee," &c., are printed in distinctive type as in the text, as a reminder to the draftsman that they have a special import.

the consent (hby testified) of the sd A. & B., doth hby assn unto the sd K. & L.; ALL THAT the pt, share, or intt in revon expectant on the dece of the sd X., in the within written indre comprd & assnd, of & in the within & above mentd sum of £——, &c., Stk, or the trust-funds wch may be substituted for the same & the income thof: AND ALSO all that the yrly sum of £—— by the within written indre covtd to be pd by the sd X.: AND ALSO all that the within & above-mentd sum of £——, secd by the bond of the sd A., & the intt due & to accrue due in respt thof; AND ALSO all that the within & above mentd policy of assurse on the life of the sd A., & the sum of £——, & other sums assured by or to become payable in respt thof: AND ALL other (if any) the trust-funds & ppty whatsr comprd in or subjt to the trusts of the within written indre, or wch are now invested in the sd K. upon the trusts thof: AND the benefit of all powers & remedies for receivg, recoverg, & givg effectual rects for the sd respive premes, & every of them & every pt thof (c): To HOLD the same unto the sd K. & L., their exs, ads, & assns, upon the trusts & subjt to the powers & provons upon & subjt to wch the same resply ought to be held by virtue of the within written indre (d). IN WITS, &c. (e).

Of rever-
sionary
interest.

Annuity.

Sum
secured
by bond.Policy of
assurance.Other
trust-
funds.Habendum
on trusts of
settlement.

(c) A power of attorney to use the name of the assignor of a chose in action may now be omitted, if express notice of the assignment is given to the debtor (which of course may be done at any time should it be necessary to sue); see the Judicature Act, 1873, s. 25, sub-s. 6. As to policies of assurance, see also the Policies of Assurance Act, 1867 (30 & 31 Vict. c. 144). In the case of this precedent the power of attorney would, even prior to those acts, have been inappropriate, as the assignor, not being an original trustee, was himself only an assignee of the bond debt and policy, and a power to use his name would be useless; but his assignment would pass the benefit of any power of attorney (if in proper form) contained in the assignment to him.

As to
omitting
the power
of attorney
in an as-
signment
of a chose
in action.

As to the necessity for stamping the assignment in order to give a right to sue, and give a discharge for the policy money, see the Stamp Act, 1891, s. 118, an objectionable provision.

As to
stamping
assign-
ment.

The "all estate" clause, which if inserted, would come in here, is omitted, having regard to the Conv. Act, 1881, s. 63; see CONVEYANCES ON SALE.

As to
omitting
the "all
estate"
clause.

(d) If so intended add, power for solicitor-trustee to charge, *ante*, p. 108, vi.

(e) Notice of the deed must be given to the trustees of the reversionary interest, to the insurance office, and to the covenantor for payment of the annuity; but notwithstanding the provisions of the Judicature Act, 1873,

III.

APPOINTMENT (*by independent deed*) of NEW TRUSTEES of a SETTLEMENT in lieu of retiring and deceased trustees (a), where the HUSBAND and WIFE are dead, and the trust FUNDS have been partly DISTRIBUTED, and the remaining part consists of MONEY invested on MORTGAGE which is transferred by a SEPARATE DEED (b), the various DEALINGS with the funds, and two prior DEEDS endorsed on the settlement, being shortly recited.

Recitals. Marriage settlement. *PARTIES*, L., *continug tree*, 1; K., *retirg tree*, 2; N. & Q., *new trees*, 3. *WHAS* by an indre, dated, &c., & made betn A., *husbd*, of the first pt, C. *wife*, then & thrin descd as B., spinster, of the second pt, & E., G., & K., of the third pt (being the settlemt made on the marre then intd. & shortly aftwds solemnised of the sd A. & C.), a sum of £——, &c., Annies thrin stated to have been transferred into the names of the sd E., G., & K., was settled upon the trusts thrin mentd, being trusts for the sd C. & A. successively for life, with remr to the chn of the sd marre as the sd A. & C., or the survivor of them shd appt, & in default of such apptmt for all such of the sd chn as being sons shd attain the age of 21 yrs, or being daurs shd attn that age or marry, in eql shares as thrin mentd: AND the indre now in recital contd the usual hotchpot clause & power for the advancemt of the chn of the marre after the dece of the sd A. & C., or durg the lifetime of them or the survivor of them with their, his, or her consent in writg: AND it was thby decld, &c., *power to appt new trees on death or resignon vested in the husbd & wife, or the survivor, & aftwds in the survivg or continug (includg retirg) trees, to be set out fully as far as material*: AND *WHAS* on the —— day of —— the sum of £——, pt of the sd sum of £—— Annies was (with the consent

Part of funds applied for advancement of a son.

s. 25, sub-s. 6, referred to above, p. 111, note, it can scarcely be necessary to give formal notice to the bond debtor also, as he is a party to the deed.

(a) See *Re Norris*, 27 Ch. D. 333, above, p. 101.

(b) For form of transfer of mortgage to the new trustees, framed so as to keep notice of the trust off the title to the mortgaged estate, see MORTGAGES. The mortgage cannot be transferred by the declaration of the appointor; see above, p. 104.

of the sd A. & C., testified by a deed poll under their respive hands & seals dated, &c., & endorsed on the sd indre of settlemt) sold by the sd trees (leavg the sum of £—— like Annies remaing invested in their names), & the proceeds thof were applied by them for the advancemt of D., one of the chln of the sd marre : AND WHAS the sd C. died on the —— day of ——, witht havg concurred with the sd A. in exercisg the jt power of apptmt by the sd settlemt given to them as afsd : AND WHAS the este duty which became payable on the death of the sd C. was raised by the sd trees by a sale of £—— Annies, pt of the sd sum of £—— Annies, & pd : AND WHAS there were issue of the sd marre three chln & no more, viz., the sd D., who attned the age of 21 yrs on the —— day of ——, S., now the wife of P., with whom she intermarried on the —— day of ——, & T., who is still an infant : AND WHAS the sd E. died on the —— day of ——, & by an indre (endorsed on the sd settlemt) dated, &c., & made, &c., the sd L. was apptd by the sd A. to be a tree of the sd settlemt in the place of the sd E., & the sum of £——, &c., Annies, being the residue of the sd sum of £—— like Annies after the sales of the pts thof hinbfe recited, & of £—— further pt thof for paymt of expses was thrupon transferred into the names of the sd L., G., & K. : AND WHAS by a deed poll under the hand & seal of the sd A., dated, &c. (& also endorsed on the sd settlemt) the sd A. in exercise of the power in that behalf in the sd settlemt contd, apptd the sum of £——, pt of the sd sum of £—— Annies to the sd S., & the sd A. thby also reled to her his life intt in such appted sum : AND [the balce of] such sum [after payg or providg for the paymt of the succession duty payable in respt thof,] was accdly, with the consent of the sd S., transferred by the sd trees to her husbd, the sd P., leavg the sum of £—— like Annies remaing invested in their names upon the trusts afsd : AND WHAS the sd L., G., & K., with the consent of the sd A., sold out the sd last mentd sum on the —— day of ——, & invested the proceeds thof in the pchase in their names of the sum of £—— Bank Stk : AND WHAS the sd A. died on the —— day of ——, witht havg exercised (save as afsd) the power of apptmt given by the sd settlemt to the survor of them, the sd A. & C. : AND WHAS upon the dece of the sd A. the sum of £——, pt of the sd sum

Death of
wife.

Payment of
estate duty.

Family.

Death of
one trus-
tee and ap-
pointment
of new
trustee.

Appoint-
ment of
sum to
daughter.

Change
of invest-
ment.

Death of
husband.

Payment
of shares to
children,

except an
infant.

Death of
another
trustee.

Investment
of infant's
share on a
mortgage.

Desire to
retire.

Mortgage
to be trans-
ferred by
separate
deed.

Appoint-
ment of
new trus-
tees.

Declaration
of trust.

of £—— Bank Stk, was sold out by the sd L., G., & K., & produced the sum of £——, & the sum of £—— pt thof, makg with the sum so advanced for the benefit of the sd D., as afsd, wch was brought by him into hotchpot, the amt of his share in the sd trust premes, was pd to him after deductg costs [& duties (c) payable in respt thof] & the sum of £——, further pt of the sd sum of £——, makg with the sum so apptd to the sd S., & pd to the sd P. her husbd as afsd, wch was brought by them into hotchpot, the amt of the share of the sd S. in the sd trust premes, was, with her consent, pd to the sd P. after deductg costs [& duty, & the remr of the sd sum of £——, produced by the sd sale, was applied in paymt of the duty payable in respt of the expectant share of the sd T. in the sd trust premes]: AND WHAS the sd G. died on the —— day of ——: AND WHAS the sum of £——, the residue of the sd sum of £—— Bank Stk after such sale as afsd, was, on the —— day of ——, sold by the sd L. & K., & the proceeds thof, amtg to £——, were invested by them upon a mtge of certn freehd ppty, situate at, &c.: AND WHAS the sd K. is desirous of being dischgd from the trusts of the sd indre of settlemt, & the sd L. & K. are desirous of apptg the sd N. & Q. to be trees thof in the place of the sd G. & K.: AND WHAS the sd sum of £—— & the secs for the same are intd to be transferred by the sd L. & K. to the sd L., N., & Q., by an indre bearg even date with, & to be exted immedly after these psnts, & made betn, &c.: NOW THIS INDRE WITNETH, &c., *apptmt of N. & Q. to be trees in the place of G. & K.*, p. 106. *Declon of trust*, p. 107, of, “the sd mtge debt of £—— & intt, & the secs for the same.” IN WITS, &c.

(c) Succession duty on the sum advanced to D., and succession duty, if any, at the higher rates, will be payable on the residue of his share and on the shares of the other children.

IV.

APPOINTMENT (*endorsed*) by deed poll or writing not under seal (a) under a power to appoint by deed or writing, or the statutory power, of a NEW TRUSTEE of a SETTLEMENT in place of a DECEASED TRUSTEE, where all the trust PROPERTY is transferred by a SEPARATE INSTRUMENT or INSTRUMENTS. A SHORT form.

TO ALL TO WHOM THESE PSNTS SHALL COME, C., of, &c., widow, formerly D. within named, *the tenant for life*, sends greetg. *Recite marre, death of husbd, death of tree, desire to appt:* AND WHAS the trust este subj't to or held upon the trusts of the within written indre now consists of the stks, funds, secs, hds, & ppty, the short parlars of wch are contd in the schdle hto, & wch are intd to be forthwith, or as soon as may be, transferred or assured so as to be vested in the sd, *continuing & new trees*, jtly: NOW THESE PSNTS WITS, &c., *apptmt of new tree in place of deced tree*, p. 106. *Declon of trust*, p. 107. IN WITS, &c.

Recitals.

Present
state of
trust
property.Appoint-
ment and
declara-
tion.

[Schdle.]

V.

APPOINTMENT (*endorsed*) of a NEW TRUSTEE of a DEED (of even date with a Marriage Settlement by which FREEHOLDS and COPYHOLDS were conveyed and covenanted to be surrendered to trustees in trust for SALE) (b). CONVEYANCE of the trust PROPERTY. VARIATION, where PART has been sold.

PARTIES, the within named F., *surviving tree*, 1; the within named A., *the husbd*, 2; K., *new tree*, 3. *Recital of the marre:* Recitals.

(a) Although the power, whether in the instrument or the statute, may be exercisable by writing not under seal, it is better that it should be by deed, the stamp being the same.

(b) See the Precedents of two deeds for effecting a settlement of real or

Surrender and admittance.	AND WHAS the within mentd copyhd or customary hds & premes were on the — day of —, duly surrendered to the use of the within named F. & G. & their hrs, psuant to the covt in that behalf in the within written indre contd, & the sd F. & G. were on the same day duly admitted thto: [AND WHAS the within mentd messe & hds, situate at —, being pt of the freehd premes in the within written indre comprd, with the appurts, were on the — day of — sold by the sd F. & G., with the consent of the sd A. & C., <i>the wife</i> , & conveyed to the pchaser thof, in exon of the trusts of the sd indre]: AND WHAS [the residue of] the freehd & copyhd hds in the within written indre comprd are still unsold: <i>Recite deaths of C. & G., & desire to appt K. in the place of the latter, ante, p. 110</i> : NOW THIS INDRE WITNETH, <i>apptmt by F., with consent of A., of K. to be tree in the place of G., p. 106</i> : AND THIS INDRE ALSO WITNETH that in psuance of the sd apptmt the sd F. as tree doth hby grt unto the sd F. & K. (b), ALL & SINGR the freehd messes, lands, tenemts, hds, & premes, situate in the respive parishes of — & — in the coy of —, in the within written indre comprd or expd to be thby grted [except such pts thof as have been sold as hinfte recited], & all other, if any, the hds of freehd tenure wch are now by any means vested in the sd F., upon the trusts of the within written indre (c): To HOLD the same UNTO & TO THE USE of the sd F. & K., their hrs & assns (d) subjt to the leases & tenancies affectg the sd respive premes, nevs upon & for the trusts & pposes upon &
Sale.	
Present state of property.	
Appointment of new trustee.	
Conveyance (a). Parcela.	
Habendum. To use of trustees.	

leasehold estate in this manner, *infra*, SETTLEMENTS. An appointment of a new trustee of the settlement will be executed concurrently. See next Precedent.

(a) As to vesting the trust estate by declaration, see pp. 103—105.

(b) See above, p. 110, note.

All estate clause.

(c) As to the omission of the "all estate" clause, see the Conv. Act, 1881, s. 63, above, p. 111, note, and as to the omission of the "general words," see the same Act, s. 6. The latter words are of course in a deed of this kind especially superfluous.

Form of conveyances in fee of trust estates.

(d) A conveyance of freeholds to trustees must (notwithstanding s. 30 of the Conv. Act, 1881, carrying trust estates to the personal representatives of the surviving trustee) be made to them and their "heirs" (or, if preferred, "in fee simple," under s. 51 of the same Act), as this is essential to pass a fee simple by deed (except of course in the case of the statutory mode of vesting the trust estate by the declaration of the appointor, see p. 103). In this collection the word "heirs" is used in preference to "in fee simple."

for wch the same premes ought to be held under or by virtue of the within written indre: AND THIS INDRE ALSO WITNETH that, in psuance of the sd apptmt, the sd F. as tree doth hby covt with the sd K., his hrs & assns, that he, the sd F., or his hrs will forthwith at the cost of the trust este surrender into the hands of the lord or lords, lady or ladies of the within mentd manor of —, accdg to the custom thof, ALL & SINGR the copyhd or customary messes, lands, tenemts, hds, & premes in the within written indre comprd & thby covtd to be surrendered, or wch are now by any means vested in the sd F. upon the trusts of the sd indre, TO THE USE of the sd F. & K., their hrs & assns, accdg to the custom of the sd manor, subjt to the tenancies affectg the same premes, but upon & for the trusts & pposes upon & for wch the sd premes ought to be held under or by virtue of the within written indre. IN WITS, &c.

Covenant to surrender copyholds (e).

Parcels.

To use of trustees.

VI.

APPOINTMENT (*endorsed*) of a NEW TRUSTEE of a SETTLEMENT of MONEY to be produced by the SALE of REAL ESTATE conveyed by deed of even date with the Settlement in trust for sale with a DECLARATION of trust of the PURCHASE-MONEY by reference to the Settlement. VARIATIONS, where PART of the property has been sold. To accompany the last Precedent.

PARTIES, the within named F., *surviving tree*, 1; the within named A., *the husbd*, 2; K., *new tree*, 3. *Recitals of the marre, surrender of the copyhds*, “comprd in the within recited indre of even date with the within written indre,” & *admittce of F. & G., the origl trees*: [Sale of pt of freehds, “comprd in the sd within recited indre,” as in last Precedent: AND WHAS the net proceeds of the sd sale (after paymt of costs), amtg to £—, were on the — day of — invested by the sd F. & G., in the pchase in their names of the sum of £—, &c., Annies: AND WHAS the sd last-mentd sum was in the yr — converted

Recitals.

Investment of sale moneys.

Conversion of stock.

(e) See the Copyhold Act, 1894, s. 1 *et seq.*, as to enfranchisement.

Deed of
even date
appointing
new trus-
tees of con-
veyance.

Desire to
appoint.

Appoint-
ment.

Declaration
of trust.

into the sum of — 2 $\frac{3}{4}$ p. c. Consold. Stk]: *Recitals of [residue of] freehds & copyhds being unsold, & deaths of C., the wife, & G., the deced tree, see last Precedent: AND WHAS* by an indre of even date with & made betn the same pties as these psnts, & endorsed on the sd within recited indre, the sd K. has been duly appted by the sd F., with the consent of the sd A., to be a tree of the same indre in the place of the sd G.: AND [the unsold pts of] the sd freehd & copyhd hds & premes have been duly conveyed & covted to be surrendered resply to the use of the sd F. & K., their hrs & assns, upon the trusts of the sd within recited indre: AND WHAS the sd F., with the consent of the sd A., is desirous of apptg the sd K. to be a tree of the within written indre, in the place of the sd G. [*Recital of intention to transfer stk*]. NOW THIS INDRE WITNETH, &c., *apptmt in exercise of power in within written indre or statutory power of K. to be a tree thof in the place of G., p. 106: Declon of trust of, “[the sd sum of £——, &c., Stk, when the same shl have been transferred as afsd, &] the moys to arise from the sale of [such pts of] the sd freehd & copyhd hds [as are still unsold as afsd], & the trust funds & ppty wch may from time to time represent the same resply, & the income thof, & the rents & profits of the sd hds until sold,” by referce to “the within written indre,” p. 107. In WITS, &c.*

VII.

APPOINTMENT *by supplemental deed (a) of a NEW TRUSTEE of a STRICT SETTLEMENT of FREEHOLDS, LEASEHOLDS and COPYHOLDS, the Trustees (as regards the FREEHOLDS) being only GRANTEES to USES and DONEES of powers, WITHOUT any LEGAL ESTATE, and the appointment being effected WITHOUT any CONVEYANCE of the Freeholds. VARIATIONS, where estates to*

Indepen-
dent deed
preferable.

(a) In a case of this kind, as the appointment may ultimately cease to be material to the title, it may be better, in order to facilitate its removal from the title, that it should be made by independent deed (which may conveniently be supplemental), and not by endorsement.

preserve CONTINGENT REMAINDERS (b), or JOINTURE or PORTIONS terms are vested in the Trustees; also where there have been SALES, EXCHANGES, ENFRANCHISEMENTS, PURCHASES, and GRANTS in fee at CHIEF RENTS, &c.; also where another estate has been settled to the uses of the principal Settlement (c).

PARTIES, A., tenant for life and donee of power of apptg new trees, 1; F., retiring tree, 2; H. & K., continuing trees, 3; L., new tree, 4. Supplemental to an indre dated, &c., and made,

(b) Cases of estates to preserve contingent remainders are becoming rare, but this precedent will serve for any other case in which estates of freehold as well as terms of years are vested in the trustees. For a case where the entire legal estate is in the trustees, see Precedent V.

Estates to preserve contingent remainders.

(c) In the common case where there have been sales, &c., and repurchases, and other dealings, the following recitals may be added:—"AND WHAS divers pts of the hds comprd in [or wch have since become subjt to] the settlemt have from time to time been sold or exchanged & divers enfranchisemts have been made of copyhd tenemts held of manors thrin comprd under the respive powers thrin contd or the statutory powers in that behalf & portions of the moys arisg from such sales, exchanges, & enfranchisemts, have been invested in the pchase of hds of freehd, copyhd, or leasehd tenure wch have been conveyed or assured (in effect) as to the freehd portions thof to the uses of the settlemt, & as to the copyhd & leasehd portions thof to the trees of the settlemt upon trusts correspondg with the uses to wch the freehd hds thrin comprd were thby limd: AND WHAS divers portions of the freehd hds comprd in [or wch have since become subjt to] the settlemt have been from time to time conveyed or granted in fee for buildg or other pposes in conson of perpetual yrly rents chged upon or issuing out of the hds so conveyed or granted, or pt thof, or other hds, & wch yrly rents have been & now stand limd (in effect) to the like uses to wch the hds so conveyed or granted in fee wd have stood limd or subjt under or by virtue of the settlemt or orwise if the same had not been so conveyed or granted: AND WHAS the short parlars of the sd sevl sales, exchanges, enfranchisemts, pchases, & convces or grants in fee at rents are contd in the schdle hto: AND WHAS divers moys arisg from such sales & other transons as afsd have been from time to time invested by the sd trees in divers stks or secs, & there now remains

Recitals of dealings with settled estate.

Recitals.	&c., being a settlemt made in contemplon of the marre, &c. (hinafter called the settlemt): <i>Recite surrender of copyhds to use of & admittce of trees psuant to settlemt, desire of F. to retire,</i>
Appoint- ment.	<i>desire of A. to appt new tree:</i> NOW THIS INDRE WITNETH, &c., <i>apptmt by A. of L.,</i> "to be a tree of the settlemt in the place of the sd F., for the sevl pposes for wch the sd F. was appted a tree by the settlemt," p. 106: [AND THIS INDRE FURTHER WITNETH that, in psuance of the sd apptmt,
Grant of estates to preserve contingent remain- ders.	invested in the names of the sd F., H., & K. the sum of £—— stk, & there is also a sum of £—— cash in their hands in respt thof: AND WHAS the sd respive sums of £—— stk & £—— cash are intd to be forthwith transferred to the sd H., K., & L."
Convey- ance when there have been deal- ings with settled estate.	In the same case the conveyance of the freeholds will be of,—“All & singr the manors, messes, lands, rents, & hds, wch under or by virtue of the settlemt or any subseqt convce or assurce to the uses or upon the trusts thof or orwise, now stand limd to or vested in the sd F., H., & K., & their hrs durg the respive lives in the settlemt mentd, or for any other este or intt of a freehd nature: <i>Habendum</i> , for all the este or estes, &c., limd to or vested in the sd F., H., & K., as afsd, nevs, upon the trusts, &c., upon & subjt to wch the same resply ought to be held by virtue of the settlemt or any such convce or assurce to the uses thof as afsd or orwise.”
	There will be corresponding alterations in the other clauses, and the addition of a declaration of trust of the sums of stock and cash, as at p. 107, and a schedule.
Estate settled by reference to uses of another estate.	Where an estate has become settled (whether voluntarily or in perform-ance of a condition) to the uses of a previous settlement of another estate by reference thereto, the fact that the two are really distinct settlements is apt sometimes to get overlooked (<i>Taylor v. Miles</i> , 28 Beav. 411), especially where the two estates adjoin. It is important to remember this on appointing new trustees, since if in terms appointed trustees of the original settlement only, they would not thereby become trustees of the second settlement, and confusion and difficulty might arise. The varia-tions in the above precedent for this case would be slight. The deed would be expressed to be supplemental to both settlements, and in the recitals and operative parts both the settlements would be referred to throughout by saying “the sd respive settlemts,” &c. It may also be pointed out that, if in such a case there are funds under both settle-ments arising from sales, &c., they should be treated as distinct, as such moneys may possibly not be applicable as a common fund for the purposes of either settlement under the Settled Land Act or otherwise (see as to this <i>Re Byng</i> , [1892] 2 Ch. 219); and if the settlors are different they may be subject to different death duties.

the sd F., H., & K., as trees do hby grant unto the sd H., K., & L. (a), ALL & SINGR the manors, messes, lands, & hds by the settlemt limd or assured unto or to the use of the sd F., H., & K., & their hrs, durg the respive lives thrin mentd, or for any other este or intt of a freehd nature (b) : To HOLD the same UNTO & TO THE USE of the sd H., K., & L., & their hrs, for all the este or estes, intt or intts of a freehd nature, by the settlemt limd to the use of or vested in the sd F., H., & K., & their hrs, nevs upon the trusts, & subjt to the powers & provons by & in the settlemt decl'd & contd concerng the same] : [AND THIS INDRE ALSO WITNETH that, in psuance of the sd apptmt, the sd F., H., & K., as trees do hby assn unto the sd H., K., & L., ALL & SINGR the manors, &c., by the settlemt limd or assured to the use of them, the sd F., H., & K., their exs, ads, & assns, for the respive terms of — & — yrs as thrin mentd : To HOLD the same UNTO the sd H., K., & L., their exs, ads, & assns, for the respive terms of yrs so limd to or vested in the sd F., H., & K., their exs, ads, & assns as afsd, nevs upon the trusts, &c., *as above.*] AND THIS INDRE ALSO WITNETH that, in psuance, &c., the sd F., H., & K., as trees do hby assn unto the sd H., K., & L., ALL & SINGR the messes, lands, & hds of leasehd tenure by the settlemt assned or assured to the sd F., H., & K., their exs, ads, & assns : To HOLD the same UNTO the sd H., K., & L., their exs, ads, & assns, for the residue of the respive terms of yrs for wch the same are resply holden, subjt to the paymt of the rents & the pformce & observe of the covts & condons reserved & contd in the respive leases under wch the same resply are holden, nevs upon the trusts, &c., *as above.* AND THIS INDRE ALSO WITNETH that, in psuance of, &c., each of them, the sd F., H., & K., as a tree, so far only as relates to the acts of himself & his own hrs, doth hby covt with the sd L., his hrs & assns, that they, the sd F., H., & K., or their hrs, covt to *surrender copyhds at expse of trust este to the use of H., K., & L., & their hrs, see p. 117, nevs upon the trusts, &c., as above.* IN WITS, &c.

Habendum
to trustees.

Assign-
ment of
jointure
and por-
tion terms.

Haben dum
to trustees.

Assign-
ment of
leaseholds.

Covenant
to surren-
der copy-
holds.

(a) See above, p. 110, note.

(b) As to the omission of the general words and all estate clause, see above, p. 111, note, and p. 116, note.

VIII.

APPOINTMENT *by supplemental deed of new Trustees of a PORTIONS TERM by the EXECUTOR of the LAST SURVIVING Trustee under the STATUTORY POWER, with the concurrence of the principal beneficiaries. VESTING declaration as to FREEHOLDS and EQUITABLE COPYHOLDS (a).*

Recitals.

Request to appoint.

Vesting declaration.

PARTIES, A., exor of last survivg tree, 1; B., C., & D., beneficiaries, 2; E. & F., new trees, 3. WHAS these pants are supplemental to an indre, &c. (hinafter called the ppal indre), being a deed limitg a term of 1500 yrs, to commce from the death of the survor of X. & Y. to M. & N. for raisg portions. Deaths of X. & Y. Death of M. Will of N. apptg A. exor. Death & probate. That sales, &c., & reinvestmts in pchase of freehds & copyhds have been made, see last Precedent, note, p. 119: AND WHAS the sd A. has been requested by the pties hto of the 2nd pt to appt the sd pties hto of the 3rd pt to be trees of the sd portions term in the place of the sd M. & N.: NOW THIS INDRE WITNETH that, in exercise of the power for this ppose conferred by the Statute in that behalf, & of every other power, &c., the sd A., with the approbon (hby testified) of the sd pties hto of the 2nd pt, doth hby nominate & appt the sd E. & F. to be trees of the ppal indre in the place of the sd M. & N., for all the pposes for wch the sd M. & N. were by the same indre appted trees: AND THE SD A. DOTH HBY DECLARE that all such of the hds, of whatsr tenure (b), comprd in the ppal indre, & thby limd or settled to the use of or in trust for the sd M. & N. for the sd term of 1500 yrs as remain unsold, & all other lands & hds, of whatsr tenure, wch by the means hinfce recited, or by any other means whatsr, have become or are now comprd in or subjt to the trusts of the same term, & all the este & intt thrin (whether at law or in equity) wch was vested

(a) See pp. 103—107.

As to vesting equitable estate in term.

(b) As the entire legal estate in fee in the copyholds is in the general trustees of the settlement, and the trustees of the term of 1,500 years have only an equitable estate in them for the term, this can be vested by declaration under the Tree. Act, 1893 (which repeals, and by sec. 12 re-enacts, the Conv. Act, 1881, s. 34), as it is not within the exception in sec. 12 (3) of that Act.

in the sd M. & N. or the survivor of them, or is now vested in him the sd A. as such exor as afsd, or is subj't to the trusts of the sd term of 1500 yrs, shl forthwith vest in the sd E. & F. as jt tenants for the sd term of 1500 yrs or other the este or intt last afsd upon the trusts to wch the same are resply subj't under or by virtue of the ppal indre or any such convce or assurce to the uses or upon the trusts thof as afsd or orwise. IN WITS, &c.

IX.

APPOINTMENT of NEW TRUSTEES (*the NUMBER being increased*) of a WILL containing a general devise and bequest of Freehold, Copyhold, Leasehold, and Personal Estate in TRUST for CONVERSION. CONVEYANCE and ASSIGNMENT of the Trust PROPERTY (c), PART having been converted & the PROCEEDS invested in various securities. VARIATIONS, where the COPYHOLDS are not devised to but directed to be sold by the Trustees: and where the appointment is made under the STATUTORY POWER.

PARTIES, A., continuing tree, 1; B., retiring tree, 2; H. & K., new trees, 3. WHAS X., late of, &c., deced, by his will dated, &c., after bequeathg certn legacies & annies, devised & bequed all his freehd [copyhd] & leasehd estes, & all the residue of his psonal este unto & to the use of the sd A. & B., their hrs, exs, ads, & assns resply, upon the trusts thinafter mentd, & he thby directed his sd trees to sell, convert, & get in the same

Recital of will (d).

(c) As to vesting the trust estate by declaration, see p. 103. Where the executorship has not been wound up, it may be desirable to add a declaration that the conveyance of the trust estate is not to be deemed an assent by the executors to the specific or residuary bequests of leaseholds or personalty in trust: see *Re Tuck*, 30 Sol. J. 320.

As to declaration avoiding executors' assent to bequests.

(d) The appointment may, for greater brevity, be treated as supplemental to the will (to which there is of course no objection, although s. 53 of the Conv. Act, 1881, applies to deeds only, see p. 2, note), in which case it will be expressed as "intd to be read as annexed or supplemental to the will of X., late of, &c., dated, &c., & proved, &c."

As to making appointment supplemental to will.

Death and
probate.

Admit-
tance to
copyholds.
Execu-
torship wound
up.

Present
state of
trust funds.

Real and
leasehold
estate not
converted.
Personal
estate still
outstand-
ing.

[& also all his, the sd testor's, copyhd estes] & to invest the proceeds thof as thrin mentd: AND the sd testor thby authorised the postponement of such sale & conversion: [AND he thby devised unto the sd A. & B. & their hrs all estes vested in him upon any trust or by way of mtge, subjt to the trusts & equity of redmon subsistg thrin resp] (a): [AND the sd will contd a power, &c., *recite power, if any, to appt new trees & to increase the no., vested in the survivg or continuing tree or trees, includg retirg trees, as far as material*]: AND the sd testor appted the sd A. & B. exs of his sd will: AND WHAS the sd testor died on the — day of — witht havg revoked or altered his sd will, wch was duly proved by the sd A. & B. in the Ppal, or, “ — District ” Registry on the — day of —: [AND WHAS the sd A. & B. were on the — day of — duly admitted to all the copyhd hds devised by the sd will]: AND WHAS all the funl & testy expses & debts of the sd testor, & the legacies bequed by his sd will have been fully pd & satisfied, & one of the annies thby bequed has ceased by the death of the annuitant, & all arrears thof have been pd, & the sum of £—, &c., Annies was appropriated & invested in the names of the sd A. & B. to answer such of the annies thby bequed as were payable: AND WHAS such last mentd sum was in the yr 18— sold & the proceeds invested in, &c.: AND WHAS pt of the sd testor's residuary psonal este has been got in & realised by the sd A. & B., & the clear proceeds thof (after such paymts & appropriions as afsd) have been invested by them in the pchase in their names of divers stks, funds, shares, & secs, psuant to the trusts of the sd will, & some of such investmts have since been transposed, & the parlars of the psnt investmt thof (inclusive of the investmt appropriated to provide for the sd annies) are specified in the first schdle hto: AND WHAS the real & leasehd estes of the sd testor have not yet been sold psuant to the trusts of his sd will, & consist of, &c., *short parlars referrg, if convenient, to a second schdle*: AND WHAS certn portions of the sd testor's psonal este are also still outstandg or unrealised, & consist of, &c., *short*

(a) The testator is supposed to have died before 1882, or to have been admitted to copyholds vested in him as trustee or mortgagee; see C. A., 1881, s. 30; and as to copyholds, see Copyhold Act, 1894, repealing, and, by s. 88, re-enacting, the Copyhold Act, 1887, s. 45.

parlars referrg, if convenient, to a third schdle; AND WHAS the sd B. is desirous of being dischged from the trusts of the sd will, & the sd A. & B. are desirous of apptg the sd H. & K. to be trees thof in the place of the sd B. : *AND WHAS* the sevl stks, funds, shares, & secs specified in the sd first schdle hto are intd to be forthwith transferred into the jt names of or so as to be under the jt legal control of the sd A., H., & K. : *NOW THIS INDRE WITNETH, &c., apptmt under the power in the will, if any, or in the statute, of H. & K., "to be trees of the sd will in the place of the sd B.," p. 106 (b): AND THIS INDRE ALSO WITNETH* that, in psuance of the sd apptmt, the sd A. & B. as trees do hby grt unto the sd A., H., & K. (c), *ALL THOSE* the sd freehd — hds & premes hinbfe [& in the second schdle hto] mentd, & all & singr other (if any) the freehd messes, tenemts, lands, tithes, & hds whatar & wheresr by the sd will of the sd X. devised to the use of the sd A. & B. & their hrs, or wch are now by any means vested in the sd A. & B. upon the trusts of the sd will (d) ; *To HOLD* the same UNTO & TO THE USE of the sd A., H., & K., their hrs & assns, subjt to the leases & tenancies affectg the sd respive premes, upon the trusts hinafter expd : [*Covt by A. & B., with H. & K., to surrender the copyhds to the use of A., H., & K., & their hrs, to be inserted if the copyhds are devised by the will to the trees, see Precedent V.:*] *AND THIS INDRE ALSO WITNETH* that, in psuance of the sd apptmt, the sd A. & B. as trees do hby assn unto the sd A., H., & K., *ALL THOSE* the sd leasehd —

Desire to retire and appoint.

Intention to transfer stocks.

Appointment.

Grant of freeholds.

Parcels.

Habendum to trustees.

Covenant to surrender copyholds.

Assignment of leaseholds.

Parcels,

(b) If there is no power in the will to increase the number of trustees, this can only be done, if at all, under the Trustee Act, 1893, repealing, and by s. 10 re-enacting the C. A., 1881, s. 31; see above, p. 102. As to the retrospective operation of those enactments, see p. 99. If the will was before the Act and omitted the power in reliance on Lord Cranworth's Act (which did not authorize the number to be increased), it is conceived that the appointment to fill the vacancy should be made under the combined operation of that Act and the will (if containing a provision enabling the number to be increased), or the Trustee Act, 1893, in which case the retiring trustee need not join in the appointment; but to obviate doubt it is better that he should do so, or if for any reason he is unable or unwilling this should be recited (see p. 101); and (if the appointment is made under the Trustee Act, 1893, alone) he would, if able and willing, have to join in it; see p. 101.

As to increasing the number of trustees.

(c) See above, p. 110, note.

(d) As to the omission of the general words and all estate clause, see above, p. 111, note, and p. 116, note.

and per-
sonalty.

Habendum
to trustees.

Declaration
of trust.

Grant of
trust and
mortgage
estates.

& premes hinfte [& in the second schdle hto] mentd, & all other (if any) the leasehd hds by the sd will bequed to the sd A. & B., their exs, ads, & assns, or wch are now by any means vested in them the sd A. & B., upon the trusts of the sd will, AND ALSO all [the ppty mentd in the third schdle hto & all other (if any)] the psonal este & effects by the sd will bequed to them in trust as afsd, & now remaing unsold & undisposed of, or wch are now by any means vested in the sd A. & B. upon the trusts of the sd will, TOGR WITH the full benefit of all powers & remedies for gettg in, recoverg, & givg effectual rects for the sd psonal este & premes & every pt thof (a): To HOLD the same UNTO the sd A., H., & K., their exs, ads, & assns, as to the sd leasehd premes, for all the residue now to come of the term or terms, estes, or intts for wch the same resply are held, subjt to the underleases or tenancies affectg the same, & as to the sd other psonal este & effects absolutely, but as to all the sd premes upon the trusts hinafter expd. *Declon of trust of the stks, &c., & the ppty conveyed & assned & covted to be surrendered*, p. 107: [AND THIS INDRE ALSO WITNETH that the sd A. & B. as trees do hby grt unto the sd A., H., & K., ALL & SINGR the freehd hds wch were vested in the sd testor upon any trust or by way of mtge, & wch were by his sd will devised to the use of the sd A. & B. & their hrs: To HOLD the same UNTO & TO THE USE of the sd A., H., & K., & their hrs, subjt to the equities affectg the same resply] (b). IN WITS, &c.

The first Schdle above reld to.

[*Investmts.*]

The second Schdle above reld to.

[*Real & leasehd estes.*]

(a) The power of attorney to use the names of the assignors is omitted as being unnecessary. See p. 111, note.

As to
transfer-
ring trust
and mort-
gage
estates.

(b) The transfer of the trust and mortgage estates (if any), which were vested in the testator was never necessary, and was always of doubtful propriety, except as to any mortgages which have been appropriated as part of the trust estate; see 4 Dav. Prec. 650. In the case of a testator dying since the 31st Dec., 1881, such estates would vest in the executors under the Conv. Act, 1881, s. 30 (except as to copyholds to which he had been admitted; see the Copyhold Act, 1894, s. 88), and ought certainly

A freehd farm & lands known as —, situate, &c., & comprisg — acres or thrabts.

A freehd plot of land situate, &c., adjoining, &c., containg, &c., or thrabts.

A copyhd messe or tenemt, situate, &c., held of the manor of —.

A leasehd messe & land at, &c., held under a lease, dated, &c., for a term of — yrs, from, &c., at the yrly rent of, &c.

The third Schdle above reld to.

[*Outstandg psonal este.*]

A revy share or intt in a legacy of £—— under the will of X., proved at — on the — day of, &c.

A sum of £—— due from, &c., on the secy of a bond, dated, &c.

X.

APPOINTMENT *by* SURVIVING TRUSTEE *of a* WILL *of*
separate sets of TRUSTEES *for distinct parts of the*
PROPERTY *held under distinct* TRUSTS (c), *in place*
of HIMSELF *and* DECEASED TRUSTEE. VESTING
DECLARATION.

PARTIES, A., retiring tree, 1; B. & C., new trees of pt of trust Parties.
ppty, 2; D. & E., new trees of remr of trust ppty, 3; Recite will
givg real & psonal ppty to A. & X., upon trust to convert, &c., Recitals.
p. 123, & to hold investmts after death of testor's wife as to one
moiety upon trusts for testor's son Y., his wife & chln & next of
kin, & as to the other moiety upon trust for testor's daur Z., her
husbd & chln & next of kin. Power (if any) of apptmt of new
trees in survivg or continuing (includg retiring) trees, to be set out
fully as far as material. Death of testor & probate of will,
p. 124. Conversion, &c., & investmt of residuary este, p. 124.

not to be transferred on an appointment of new trustees, except in the case before mentioned; and in that case it would seem that the transfer might be made by a separate deed not disclosing the trust, in the same mode as in *Re Harman*, 24 Ch. D. 720, where the mortgage was vested in the testator as a trustee only, and not beneficially.

(c) See p. 103.

Appropriation of distinct portions of trust estate.

Witnesseth.

Appointment of trustees of part of trust property.

Vesting declaration (b).

Death of wife. Death of X. AND WHAS the investmts specified in the first schdle hto representg one eql moiety of the net proceeds of the sale & conversion of the residuary este of the sd testor have been appropriated by the sd A. to be held upon the trusts decl'd by the sd will for the benefit of the testor's son Y., & his wife & chln & next of kin, & the investmts specified in the 2nd schdle hto representg the other eql moiety of the same net proceeds, have been appropriated by the sd A. to be held upon the trusts decl'd by the sd will for the benefit of the testor's daur Z., her husbd & chln & next of kin, *Desire of A. to retire, & to appt B. & C.* "new trees of the sd first mentd moiety of the sd trust premes," & *D. & E. of the second moiety*, p. 109 (a), & *their consent.* NOW THIS INDRE WITNETH that in psuance of the sd desire the sd A. in exercise of the powers in this behalf conferred upon him by the sd will or the statute in that behalf, & of every or any other power, &c., hby appts the sd B. & C. to be trees of the sd will in the place of the sd X., deced, & of him the sd A. so far as regards the moiety of the residuary este of the sd testor wch was bequed by his sd will upon trust for the sd Y., his wife & chln & next of kin as thrin mentd AND hby declares that all the investmts & ppty specified in the sd 1st schdle hto shl immedly upon the exon of these psnts vest in the sd B. & C. upon the trusts last afsd or such of them as are now subsistg. *Similar apptmt & declons as to the other moiety.* IN WITS, &c.

[*Schdles of investmts.*]

Variations for real estate.

(a) In the case of real estate, the appointment may be of, "the sd B. & C. to be trees, &c., so far only as regards the — este & hereds situate, &c., devised by the sd will, but not further, & the sd D. & E. to be trees, &c., so far only as regards the — este & hds' situate, &c., devised by the sd will but not further," &c.

(b) Or the trust estate may be vested by assignment in the old way. If it consists of Stock Exchange investments or mortgages, it will be transferred separately in the usual way, and a declaration of trust added, see the above Precedents and notes.

XI.

APPOINTMENT of NEW TRUSTEES of a WILL and Codicils, containing various specific and other devises and bequests to the trustees, one trustee having DIED, another having REFUSED to act, and the third RETIRING, but only TWO being appointed in the place of the THREE. VARIATIONS where the appointment is made under the STATUTE (c). The BENEFICIARIES who are *sui juris* JOIN to testify their APPROVAL and RELEASE the RETIRING trustee (d).

PARTIES, A., retiring tree & donee of power, 1; X., Y., & Z., beneficiaries, 2; H. & K., new trees, 3. Recite will (e), noticing all the devises & bequests to the trees A., D., & F., & the apptmt of them to be exors, & settg forth the power (if any) to appt new trees in the place of trees dying, whether in the lifetime of the testor or aftwds, or refusg to act, or retirg, vested in the surviving, continuing, or retirg (f) tree or trees, with power to increase or reduce the no.: Codls: Death of testor: AND WHAS the sd F., one of the trees appted by the sd will, died in the lifetime of the sd testor, namely on the — day of —: AND WHAS the sd will & codls were duly proved by the sd A. alone in the — Registry on the — day of —: AND WHAS the sd D. renounced probate of the sd will & codls, & never acted in the admon of the este of the sd testor or the exon of the trusts of the sd will & codls, & declined to accept such trusts [& by deed poll under his hand & seal, dated, &c., disclaimed the sd trusts, & all the estes & ppty, real & psonal, by the sd will & codls devised & bequed as afsd]. [Recitals shewg that exorship

Recitals.

Death of one trustee in testator's lifetime.

Probate.

Another trustee having renounced.

(c) See Trustee Act, 1893, repealing, and by sect. 10 re-enacting with additions the Conv. Act, 1881, s. 31, (1), (3), (6), and above, p. 99.

(d) Trustees sometimes stipulate for a release on their retirement, but a complete release cannot, of course, usually be given. See for other forms Vol. II., RELEASES.

(e) Unless the appointment is supplemental, see p. 123, note.

(f) Unless the power were expressly exerciseable by a retiring trustee or the case is within the Trustee Act, 1893, two deeds would in this case be necessary, namely, 1. An appointment by A. (as a continuing trustee) of a new trustee in the place of the disclaiming trustee; and 2. An appointment by the newly appointed trustee of a new trustee in place of A. retiring. For an appointment by a disclaiming trustee, see *post*, p. 134.

Mode of appointment where no continuing trustee.

has been wound up, see last Precedent, & the intts of the beneficiaries X., Y., & Z.:] AND WHAS the sd A. is desirous of being dischgd from the treeship of the sd will & codls, & it is desired to appt the sd H. & K. to be trees of the sd will & codls in the place of the sd A. & D., but it is not intd at psnt to supply the place of the sd F. as a tree thof (a): AND WHAS the sd A. has agrd at the request of the sd pties hto of the 2nd pt to make the sd apptmt, upon their joining hrin to testify their approval, & to give him such rele as is hinafter contd, wch they have agrd to do: NOW THIS INDRE WITNETH, &c., *apptmt under the power in the will or the statutory power, by A., "with the approval (hby) testified) of the sd pties hto of the 2nd pt," of H. & K. to be trees in the place of A. & D.,* p. 106: AND THIS INDRE ALSO WITNETH that in psuance of the sd apptmt the sd A., as tree, doth hby grant unto the sd H. & K., *convce of freehds to use of H. & K.—assnmt by A., "as tree," to H. & K. of leasehds & psonalty—& declon of trust of the ppty conveyed & assned, as in last Precedent, addg a referce to the codls:* AND THIS INDRE FURTHER WITNETH that in psuance of the sd agrmt & in conson of the premes, the sd pties hto of the 2nd pt do resply hby to the extent of their intts & ability rele the sd A., his hrs, exs, & ads, from all claims, demands, actions, & pcdgs in respt of the sd trust este & premes under the sd will & codls of the sd testor & the trusts thof or in respt of any sale, investmt, or transposon of investmt, paymt, or other dealg, or anythg done or omitted by the sd A. in respt thof or orwise howsoever in relon thto. IN WITS, &c.

Form of
appoint-
ment where
number is
reduced.

(a) The proper course where the number of trustees is reduced, whether under an express power or under the statutory power, is considered to be to leave one vacancy expressly unfilled, in order that it may be filled up hereafter, if desired; since otherwise an additional trustee could not be afterwards appointed so as to restore the original number (except by the circuitry of two deeds), until a fresh vacancy occurs; see the Trustee Act, 1893, s. 10 (2) (a), and above, p. 101.

XII.

APPOINTMENT *by* SUPPLEMENTAL DEED *of* THREE NEW TRUSTEES *of a* SETTLEMENT *of real and personal estate, under the statutory power, where one trustee is DEAD, another a LUNATIC, and the third has gone to RESIDE ABROAD. DECLARATION by the APPOINTOR VESTING the TRUST ESTATE in the new trustees. A short form (b).*

PARTIES, A., donee of power, 1; B., C., & D., new trees, 2.

WHAS these psnts are intd to be read as supplemental to an indre dated, &c., & made, &c., being the settlemnt exted on the marre of the sd A. with the sd K., his late wife, the power of apptg new trees whof is vested in the sd A., & supplemental to an indre of, &c., being an apptmt of the sd L. to be a tree of the sd settlemnt in the place of M., one of the trees thof who was dead, jtly with the sd N. & O., & supplemental to an indre of, &c., whby the sevl freehd & leasehd hds, the short parlars of wch are contd in the first & second pts of the schdle hto resply, were assured to the sd L., N., & O., as to such of the sd hds as are of freehd tenure in fee simple, & as to such of the sd hds as are of leasehd tenure for the respive residues ther unexpired of the terms grted by the sevl indres of lease thrin recited, & the sevl copyhd hds & premes, the short parlars whof are contd in the third pt of the sd schdle hto, were covted to be surrendered to the sd L. N. & O. & their hrs, on the trusts of the sd settlemnt: AND WHAS the sd copyhd hds & premes, were on the — day of — duly surrendered in psuance of the sd covt, & the sd L., N., & O. were duly admitted thto: AND WHAS the sd L. died in the yr —: AND WHAS the sd N. is of unsound mind & has been so found by inquisition dated, &c., [*or, but has not been so found by inquisition*]: AND WHAS the sd O, in the month of — went to

Supple-
mental
to the set-
tlement,
and to
former
appoint-
ment of
new trus-
tee,
and deed
transfer-
ring trust
estate.

Surrender
of copy-
holds.

Death of
one trustee
lunacy of
another,
and ab-
sence of
the third.

(b) As to making the deed supplemental to the settlement and the prior supplemental deeds, see above, p. 77, note; there is a practical convenience in indicating shortly the nature of the prior deeds as is here done, and the precedent would otherwise be scarcely intelligible; if preferred, the particulars of the prior deeds may be given in a schedule. As to the power to appoint new trustees and to vest the trust estate by the declaration of the appointor, see ss. 10 & 12 of the Trustee Act, 1893, re-enacting ss. 31 and 34 of the C. A., 1881, and above, pp. 99 *et seq.*

As to
making
deed sup-
plemental.

reside abroad at —, & has ever since remained & still remains abroad: *Desire to appt B., C., & D., trees in the place of L., N., & O.*: AND WHAS the ppty now subj to the trusts of the sd settlemt consists of the sd hds assured by the above-mentd indre of, &c., & the sd surrender & admittce wch are resply specified in the first, second, & third pts of the sd schdle hto, & the sevl bond debts, policies of assurse, revy intts, & annies or yrly sums wch are resply specified in the fourth pt of the sd schdle, & the furniture & effects wch are specified in the fifth pt of the sd schdle, & the sevl mtge debts, stks, funds, shares, & secs which are resply specified in the sixth pt of the sd schdle: AND WHAS it is intd that the sd copyhd hds & premes, & the sd mtge debts & the secs for the same, & the sd stks, funds, shares, & secs wch are resply mentd or specified in the third & sixth pts of the sd schdle hto, shl, as soon as may be, be assured or transferred to or vested in the sd B., C., & D., upon the trusts of the sd settlemt (a): NOW THIS INDRE WITNETH that the sd A., in exercise of the power for this ppose vested in him by the sd settlemt & the statute in that behalf, & of every other power, &c., doth hby appt, &c., *apptmt of B., C., & D. trees in place of L., N., & O.*: AND THIS INDRE ALSO WITNETH that in psuance of the sd apptmt & in exercise of the power in this behalf conferred by the statute on that behalf, he, the sd A., doth hby declare that, FIRST, the sevl freehd & leasehd hds & premes mentd or descd in the first & second pts of the schdle hto & all other, if any, the freehd & leasehd hds & premes assured by the sd indre of, &c., or wch are now by any means vested in the sd N. & O., as such survivg trees as afsd (exclusive of any lands or hds vested in them by way of

Present
state of
trust pro-
perty.

Copyholds,
mortgages,
and stocks
to be trans-
ferred
separately.

Appoint-
ment.

Vesting
declara-
tion.

As to free-
holds and
leaseholds,

As to vest-
ing the
property in
the new
trustees.

(a) If the copyholds have not been actually surrendered to the trustees, so that the legal estate is outstanding, the equitable interest (that is to say, the right to call for a conveyance of the legal estate) may be included in the vesting declaration, though it would in fact pass to the new trustees by virtue of their appointment and without any transfer; see above, p. 116. The lunacy of one of the trustees would in this case necessitate an application to the Court under the Lunacy Act, 1890, 53 Vict. c. 5 (see ss. 135 *et seq.*, s. 140 has been replaced by the Trustee Act, 1893, s. 40), in order to effect the transfer of those portions of the trust estate which cannot be vested by the appointor's declaration; see as to this, p. 101.

mtge for securg any moy subject to the trusts of the sd
settlemt), & all the este & intt of the sd N. & O., as such
survivg trees as afsd, in the same respive premes, AND
SECONDLY, the sevl bond debts & intt, policy moys, revy intts,
annies, or yrly sums, & premes specified in the fourth pt of
the sd schdle hto, & the right to recover & rece the same
respive premes, & all the este & intt of the sd N. & O. as such
survivg trees as afsd thrin, AND THIRDLY, all the furniture &
effects specified in the fifth pt of the sd schdle hto, & all the
este & intt of the sd N. & O., as such survivg trees as afsd thrin,
shl resply vest in the sd B., C., & D., their hrs, exs, ads, &
assns resply, as jt tenants, upon & for the trusts & pposes upon
& for wch the same resply ought to be held by virtue of the sd
indre of settlemt or orwise. In wrrs, &c. (b).

choses in
action,

and fur-
niture.

The Schdle above refd to.

Pts 1, 2, & 3.—*Freehds, leasehds & copyholds.*

Heredita-
ments.
Bond debt.

Pr. 4.—A bond, dated, &c., under the hand & seal of, &c.,
whby the sd — became bound to — in the penal sum of
£— conditioned for the paymt of £— & the ppal moy &
intt now due & henceforth to become due for the same & the
full benefit & advantage thof.

The sevl policies of assurce on the lives of — & — resply,
parlars whof are as follows :

Policies of
assurance.

Name of Office.	Persons in whose names Policy effected.	Amount of Policy.	Date.	Number.	Premium.

All the share, este & intt of the sd — under the above
recited indre of settlemt [will], expectant & to take effect in

Rever-
sionary
interest.

(b) Notice of the deed should be given, as regards the choses in action
transferred by it, to the several debtors, insurance offices and trustees.

posson on the death of — [or the default or failure of issue of the sd — by his wife — wch shl last happen] of & in, &c.

Annuity. An anny or yrly sum of £—— arisg, &c., *as the case may be*, & payable, &c.

Furniture. Pt 5.—The furniture & househd effects in the house of — or such pts thof as are subj to the trusts of the will of the above-mentd testor.

Mortgage debts, &c. Pt 6.—A sum of £—— with intt secd on mtge, dated, &c., of an este situate, &c.

£—— 2 $\frac{3}{4}$ p.c. Consold Stk.

£—— £4 p.c. Prefce Stk of the — Rly Co.

——shares of £—— each of the — Co Limd.

XIII.

DISCLAIMER *and* APPOINTMENT of NEW TRUSTEES *by the* DISCLAIMING TRUSTEE *under a* WILL, the HEIR and PERSONAL REPRESENTATIVE *of the* TESTATOR *joining for the purpose of vesting the trust estate in the* NEW TRUSTEES. VARIATION *where it is* VESTED *by the* DECLARATION *of the* APPOINTOR *under the* Trustee Act, 1893 (a).

Recitals. PARTIES, A., *disclaiming tree*, 1; B., *hr-at-law of testor*, 2; C., *legal psonal repve of testor*, 3; D. & E., *new trees*, 4. *Recite will of X., statg the gifts of real & psonal este to A. & K.* “upon

Power of disclaiming trustee to appoint new trustees. (a) A disclaiming trustee can exercise an express power of appointing new trustees which extends to a trustee who refuses to act, *Exp. Hadley*, 5 De G. & S. 67; and the power conferred by the Trustee Act, 1893, s. 10, but he cannot exercise an express power given only to surviving or continuing trustees, or the power given by Lord Cranworth's Act, see *Travis v. Illingworth*, 2 Dr. & Sm. 344. Both the disclaiming trustees might, of course, concur in the appointment, but it is here assumed that the one first disclaiming objects to do so. The disclaiming trustee cannot convey the trust property, which would be repugnant to his disclaimer, *Urch v. Walker*, 3 M. & Cr. 702; it must be conveyed to the new trustees by the heir or legal personal representative of the testator, as the case may require, unless it can be vested in them by the declaration of the appointor under the Trustee Act, 1893, s. 12 (see p. 104 *et seq.*). In the former case it may be

certn trusts thrin mentd," [*the power, if any, to appt new trees, exercisable by refusg or decling trees, if willg, to be recited fully*], & the apptmt of exor ; Death of testor, & grt of probate or lres of admon with will annexed to C. [*& hrship of B.*]. AND WHAS by a deed poll dated, &c., under his hand & seal, the sd K. has renounced & disclaimed all the real & psonal este & premes by the sd will devised & bequed to him jtly with the sd A., & all trusts, powers, & authorities vested in him the sd K., whether jtly with the sd A. or orwise, & the office of tree under the sd will [*or recite death of K. in testor's lifetime, as the case may be (b)*]: AND WHAS the sd A. has declined to accept the devises & beqts made to him jtly with the sd K. in & by the sd will, or to act as tree thrunder, except for the ppose of exercisg the power of apptg new trees thof in the place of the sd K., & of him the sd A., wch he has agrd to do by apptg the sd D. & E. to be such trees in mner hinafter mentd : [*Existg state of trust ppty, p. 124, mutatis mutandis*]: NOW THIS INDRE WITNETH, &c., disclaimer by A., see DISCLAIMER, save & except the power of apptg new trees of the sd will wch is hinafter exercised by him, the sd A.: AND THIS INDRE ALSO WITNETH, &c., apptmt by A. of D. & E. to be new trees in the place of K. & A. p. 106 : [AND THIS INDRE ALSO WITNETH, &c., convce & assnmt of real & psonal trust este by testor's hr "as tree" & psonal repve "as legal psonal repve of the sd X." resply to D. & E., p. 125 ; or, declon by A. vestg the trust este in D. & E., under the Tree Act, 1893, p. 107]. IN WITS, &c.

Disclaimer
by one
trustee.

Refusal of
other to
act.

Witness-
seth.

better to make the conveyance by a separate deed, as the disclaiming trustee is not concerned with it ; in the latter case it must be by the same deed (see p. 105).

(b) If K. survived the testator and acted, his executors or administrators, and not A., would be the proper persons to appoint the new trustees under the usual power.

XIV.

APPOINTMENT *by* SUPPLEMENTAL DEED *of new trustee of a Will in place of a trustee who is ABROAD where it is DOUBTFUL whether the POWER is vested in the TENANT FOR LIFE or the CONTINUING TRUSTEE (a).*

Recitals.

Deed supplemental.

Trustee abroad.

Desire to appoint.

Appointment.

Vesting declaration.

Doubt as to donee of power.

PARTIES, A., *tenant for life*, 1; B., *continuing tree*, 2; C., *new trees*, 3. *WHAS* these psnts are intd to be supplemental to the will dated, &c., & proved, &c., of X. deced (hinafter refd to as the will) whof the sd B. & Y. are the psnt trees, & whby it was provd that the power of apptg new trees thof in the place of any tree or trees who shd die or be desirous of being dischg'd or refuse or become incapable to act shd be vested in the sd A. durg his life: *AND WHAS* the sd Y. in the yr — went to reside & has ever since resided at — out of the United Kingdom: *AND WHAS* the sd A. & B. are desirous that the sd C. shl be appted to be a tree of the will in the place of the sd Y., but it is considered doubtful whether under the circes the power of apptg such new tree is vested in the sd A. as the pson nominated for the ppose by the will, or in the sd B. as the continuing tree thof: *Recitals as to trust ppty, &c.* *NOW THIS INDRE WITNETH*, that the sd A., in exercise of the power (if any) for this ppose vested in him by virtue of the will & the Statute in that behalf, as the pson nominated in that behalf by the will, & of every, &c. And the sd B. in exercise of the power (if any) for this ppose vested in him by virtue of the statute in that behalf as the continuing tree of the will & of every, &c., do resply hby appt the sd C., &c., *apptmt*, *AND THIS INDRE ALSO WITNETH*, that in psuance, &c., & in exercise of the power for this ppose vested in the sd A. or the sd B. (as the case may be) they, the sd A. & B. do resply, &c., *vestg declon*. *IN WITS, &c.*

(a) This is the case of a will before the Conv. Act, 1881, in which the power in Lord Cranworth's Act of 1860 was relied on, the tenant for life being nominated to exercise it. As the Act of 1860 does not apply to a trustee resident abroad (the words "incapable to act" meaning personal incapacity, see *Re Bignold*, 7 Ch. 223), it is necessary to have recourse to the Act of 1893; and as it might be doubtful whether the power in that case was in the tenant for life or the continuing trustee (as to which see *Re Walker*, 24 Ch. D. 698, above, p. 100), they are both made to join in the appointment.

XV.

DEED *executed on the RETIREMENT of one of three trustees of a SETTLEMENT without the appointment of a New trustee in his place, under the TRUSTEE ACT, 1893 (b). A short paragraphed form by SUPPLEMENTAL DEED without recitals.*

PARTIES, A., donee of power of apptg new trees, 1; B., retiring tree, 2; C. & D., continuing trees, 3. Supplemental to an indre of settlement dated, &c., & made, &c. (hinafter refd to as the settlemt) WITNETH, as follows:—

1. **THE** sd B. hby declares that he is desirous of retiring & being dischg'd from the trusts of the settlemt.

Desire to be discharged.

2. **THE** sd A., C., & D. hby consent to the dischge of the sd B. from such treeship, & to the vestg in the sd C. & D. alone of the ppty now held upon or subj't to the trusts of the settlemt [the short parlars of wch are stated in the schdle hto] (c).

Consent of appointor and continuing trustees.

3. **THE** sd A., B., C., & D. hby declare that all the — & premes mentd in the first pt of the sd schdle hto & all other (if any) lands, hds, chattels, & ppty, whether real or psonal (includg things in action), wch are now subj't to the trusts of the settlemt (not being a legal este or intt in copyhd or customary lands or hds, & not being lands or hds vested in the sd B., C., & D., or any of them, by way of mtge for securg moy subj't to the trusts of the settlemt) shl vest in the sd C. & D. alone, their hrs, exs, ads, & assns resp'y (accdg to the nature of the ppty) as jt tenants for all such este & intt as the sd B., C., & D., or any of them, had thrin resp'y immedly bfe the exon of these psnts & upon the trusts & subj't to the provons applicable thto resp'y by virtue of the settlemt or orwise. [Or, **THE** sd B., as tree, doth hby rele unto the sd C. & D., their hrs, exs, ads, & assns resp'y, accdg to the nature of the ppty, ALL & SINGR [the — & premes mentd in the first

Declaration vesting trust estate (d).

Or, Conveyance by retiring trustee by release (e).

(b) See ss. 11, 12; and above, p. 102; and as to supplemental deeds, see p. 71.

(c) It would be proper, though not essential, to insert a short statement of what the trust property consists of, referring if convenient to a schedule.

(d) See p. 103.

(e) As the retiring trustee must be a party to the deed, his interest in the trust property may be conveyed in the ordinary way (by release of his

As to retiring

pt of the sd schdle hto, & all other, if any], the ppty, este, & effects whatsr, whether real or psonal, now vested in the sd B., C., & D., at law, or in equity, upon the trusts of the settlemt [other than lands or hds vested in them, the sd B., C., & D., by way of mtge for securg moy subjt to the trusts of the settlemt]: To HOLD the same UNTO & TO THE USE of the sd C. & D., their hrs, exs, ads, & assns resp'y, accdg to the nature of the ppty, & to the intent that the same premes resp'y may be vested in them alone, as jt tenants, upon the trusts of the settlemt.]

Further
assurance.

4. It is hby agrd & decl'd that every further assurse, transfer & thing necy for vestg any of the ppty [mentd in the sd schdle hto, or any other ppty] comprd in or subjt to the trusts of the settlemt in the sd C. & D. alone, their hrs, exs, & ads resp'y, shl be exted & done forthwith (a). In wits, &c. (b).

[Schdle.]

XVI.

APPOINTMENT of a NEW TRUSTEE of a will for the purposes of the SETTLED LAND ACTS where the ORIGINAL TRUSTEES have been APPOINTED by the COURT.

PARTIES, X., *surviving tree*, 1; [A., *tenant for life (c)*, 2;] the sd X. & Y., *new tree*, 3. *Recite the will, shewing who is tenant*

trustee
conveying
by release.

estate in joint tenancy to his co-trustees), as in the variation in brackets. If there are mortgages they should be excepted and transferred by separate deeds. But the release may, it is considered, extend to the legal estate in copyholds (see Scriven on Copyholds, p. 116), and in this respect the conveyance has an advantage over a vesting by declaration under the late Act; and the conveyance has the further (though unimportant) advantage that it enables a covenant against incumbrances to be implied under the Act (see above, p. 110, note), which must otherwise be expressed; but it is not the practice to insert an express covenant.

(a) This clause operates as a covenant by B., *Elph. Interp.*, 426.

(b) Proper notices of the deed with respect to any choses in action should be given; see the previous precedents.

(c) As the power of appointing a new trustee for the purposes of the Settled Land Act is conferred by the Trustee Act, 1893, s. 10 and s. 47 (1), not by the Settled Land Acts, the consent of the tenant for life under the Act of 1882, s. 56 (2) is not absolutely necessary, but it is desirable to obtain his concurrence.

for life, but the sd will contained no power of or trust for sale of the sd hds [*if the testor died after 1882 add*, or of any or hds thby devised and no apptmt of trees for the pposes of the S. L. A., 1882]: AND WHAS, by an order of the Chancery Division of the High Court of Justice made by Mr. Justice — on the — day of — upon the applon of —, the sd X. & K., late of —, were appted trees of the settlemnt created by the sd will for the pposes of the Settled Land Act, 1882: AND WHAS the sd K. died on the — day of —: AND WHAS the sd X. is desirous of apptg the sd Y. to be a tree in the place of the sd K., & the sd A. approves of such appt: NOW THIS INDRE WITNETH that in psuance of the sd desire & in exercise of the powers given to him by the statute on that behalf & of every or power him enablg, the sd X. doth hby [with the approbon of the sd A.] appt the sd Y. to be a tree of the settlemnt created by the sd will for the pposes of the S. L. A., 1882 to 1890, in the place of the sd K., and to act jtly with the sd X. for the pposes lastly hinbfe mentd. In wits, &c.

XVII.

APPOINTMENT (*endorsed*) of a NEW TRUSTEE in place of a retiring Trustee of a Trust Deed of REAL and PERSONAL estate, containing general POWERS of SALE, LEASING, and MANAGEMENT, &c., where part of the property is or may be ABROAD, and the property is conveyed and assigned to a PROVISIONAL TRUSTEE upon trust to reconvey and reassign to the continuing and new Trustees (d).

PARTIES, A. & B., *psnt trees*, 1; C., *new tree*, 2; D., *provonal tree*, 3. WHAS the trusts of the within written indre have not

Recitals.

(d) See the next Precedent. The machinery of two deeds is here employed (according to the old practice, prior to 22 & 23 Vict. c. 35, s. 21, as to personalty, where there was a continuing trustee), as it might be doubtful whether, as to the property abroad, the continuing trustee could convey and assign to himself. For the same reason the appointment is assumed to be made under a power in the instrument, as the statutory power would not apply, and the other recent legislation cannot be made use of.

As to appointment and vesting where property abroad.

Trusts un-
executed.

Desire of
trustee to
retire, &c.

Appoint-
ment.

Conveyance
and assign-
ment to
provisional
trustee.

Power of
attorney to
use name
of retiring
trustee.

Habendum
to provi-
sional
trustee.

Upon trust
to reconvey
and re-
assign.

yet been fully exted : AND WHAS the sd A. is desirous of retiring from the trusts of the sd indre, & he & the sd B. have determined to appt the sd C. to be a tree thof in the place of the sd A. : NOW THIS INDRE WITNETH, &c., *apptmt by A. & B. of C., to be a tree in the place of A., p. 106* : AND THIS INDRE FURTHER WITNETH that, in psuance of the sd apptmt, & in conson of the premes, the sd A. & B. do, & each of them doth hby grt, convey, & assn unto the sd D., ALL & SNGR the ppty, este, & effects whatsr, whether real or psonal, or movable or immovable, in posson, revon, remr, or expectancy, or in action, & whether in England or abroad, wch are now under or by virtue of the within written indre or orwise howsr vested in the sd A. & B., or eir of them, for any este or intt whatsr, & whether at law or in equity, upon the trusts of the same indre, with the rights, easemts, & appurts to the sd premes belonging (save & except any mtge debts so vested, & the secs for the same, wch are intd to be transferred to the sd B. & C. by septe deeds (a)), AND ALL the este & intt of the sd A. & B., or eir of them, in the premes, TOGR WITH full power & authority to the sd D., his hrs, exs, ads, & assns, & the trees & tree from time to time of the within written indre, to use the name or names of the sd A., his hrs, exs, or ads, & to exercise & enforce all lawful or available powers & remedies for the ppose of demandg, suing for, recoverg, receivg, & obtaing posson of & givg effectual dischges for the sd respive premes comprd in the convce or assignmt hby made & every or any pt thof, & to exte & do all such instrumts, acts, & things, whether before a notary public or other public officer or orwise, as may be necy or pper for perfectg & completg these psnts, or effectually vestg the sd respive premes hby conveyed & assned in the sd D., his hrs, exs, ads or assns, or other the trees or tree from time to time of the within written indre, & for any such ppose as afsd to appt a substitute or substitutes at pleasure, To HOLD the sd real & psonal este & premes hby conveyed & assned respky UNTO & TO THE USE of the sd D., his hrs, exs, ads, & assns respky accdg to the nature of the ppty, UPON TRUST & to the intent that the sd D., his hrs, exs, or ads respky, shl forthwith

(a) See above, pp. 104, 138.

by anor indre already prepared & engrossed & endorsed on the within written indre, & intd to bear even date with & to be exted immedly after these psnts, & made betn the sd D. of the one pt, & the sd B. & C. of the other pt, convey & assn the sd premes hby conveyed & assned unto & to the use of the sd B. & C., their hrs, exs, ads, & assns resply, to be held by them upon & for the trusts & pposes applicable to the same premes resply, under or by virtue of the within written indre. *Covt by A. & B. with D. agst incumbces; see CONVEYANCES ON SALE. IN WITS, &c. (b).*

XVIII.

RECONVEYANCE *and Reassignment by the PROVISIONAL TRUSTEE in the last Precedent (also endorsed on the Trust Deed).*

PARTIES, D., provonal tree, 1; B. & C., continuing & new trees,
 2. WITNETH that in psuance & exon of the trust or diron in that behalf in the above written indre contd, the sd D. doth hby grt, convey, & assn unto the sd B. & C., ALL & SINGR the ppty, &c., *as in last Precedent*, conveyed & assned to the sd D., his hrs, exs, ads & assns, by the above written indre, with the appurts thof, AND ALL the este & intt of the sd D. in the premes, To HOLD the sd real & psonal este & premes hby conveyed & assned resply UNTO & TO THE USE of the sd B. & C., their hrs, exs, ads, & assns resply, accdg to the nature of the ppty to be held by them, upon & for the trusts & pposes applicable to the same resply, under or by virtue of the within written indre. IN WITS, &c.

Reconvey-
ance and
reassign-
ment.

Habendum
to trustees.

(b) Any proper notices as to choses in action, &c., comprised in the deed should be given.

APPRENTICESHIP.

PRELIMINARY NOTE.

For the law as to apprenticeship see Simpson on Infants, pp. 94-100; Austin of Apprentices; and the Acts in the Index to the Statutes under "Apprentice." There are of course special forms applicable to particular cases, *e.g.*, under 46 & 47 Vict. c. 41, 2nd schedule (Merchant Shipping, Fishing Boats). The following observations may be found useful.

De Francesco v. Barnum.

The case of *De Francesco v. Barnum*, 45 Ch. D. 480, may, according to a learned writer in the Law Quarterly Review, Vol. VII., p. 3, be thus summed up: "(i) An action cannot be brought against an infant on a covenant to serve (see Croke, Car. 179). Hence (ii) The negative clauses in an apprenticeship deed cannot be enforced by injunction. (iii) Where the provisions in an apprenticeship deed are unreasonable, and cannot be enforced against the infant or the infant's parent, A., the infant's master and teacher, cannot maintain an action against X. for enticing away the infant from his employment."

As to provisions not for benefit of apprentice.

Where the deed provides for paying wages, a provision stopping the wages during a lock-out or turn-out would be invalid, *Meakin v. Morris*, 12 Q. B. D. 352; *Corn v. Matthews*, [1893] 1 Q. B. 310; as also, it is presumed, would be a provision for reducing the wages in the event of the working hours being reduced under the Factory Acts or similar legislation. See further as to provisions not for the benefit of the apprentice, *Leslie v. Fitzpatrick*, 3 Q. B. D. 229.

Medical attendance.

As to the master's liability, in the absence of stipulation, to supply the apprentice with medical attendance, see *R. v. Smith*, 8 C. & P. 153.

As to an agreement by an infant not to carry on a competing business after the expiration of the term of service, see *Evans v. Ware*, [1892] 3 Ch. 502.

Death or bankruptcy of master.

In the absence of a provision to that effect, no part of the premium is recoverable on the master's death, *Whincup v. Hughes*, L. R. 6 C. P. 78; see 29 Sol. J. 315. As to the bankruptcy of the master, see the Bankruptcy Act, 1883, s. 41. If the contract of service extends to the master's executors, the deed will at his death be binding as between them and the apprentice, *Cooper v. Simmons*, 7 H. & N. 707.

Covenant for payment of premium.

If the whole of the premium is not paid at the time when the infant is bound apprentice, it is usual for the father or some other relative to covenant for payment of the balance. If the infant himself covenant for payment, whether under seal or not, he will be held liable on attaining full age, provided (1) the apprenticeship was a provident and proper arrangement,

(2) the premium was fair and reasonable. and (3) instruction has been duly given under the deed, *Walter v. Everard*, [1891] 2 Q. B. 369. As the onus of proving these facts would lie on the master, it is better, if possible, to obtain the covenant of some adult.

As to the effect of gross misconduct of the apprentice, *e.g.*, habitual theft, on the master's covenant to teach and maintain him, see *Learoyd v. Brook*, [1891] 1 Q. B. 431. Gross misconduct by apprentice.

That an apprenticeship to a corporation is good, see *Burnley, &c., Soc. v. Casson*, [1891] 1 Q. B. 75. Master a corporation.

As to stamps, see the Stamp Act, 1891, sched. APPRENTICESHIP, and GENERAL EXEMPTION FROM ALL STAMP DUTIES, and the Merchant Shipping Act, 1854, s. 143. Stamps.

As to articles of clerkship to a solicitor see 6 & 7 Vict. c. 73, ss. 4, 5, 8-11, 13; 23 & 24 Vict. c. 127, s. 7; 40 & 41 Vict. c. 25, s. 23, sched. 2. As to the period of service see 6 & 7 Vict. c. 73, ss. 3, 6; 23 & 24 Vict. c. 127, ss. 2-6, 15, 32; 35 & 36 Vict. c. 81; 40 & 41 Vict. c. 25, ss. 12-14. As to registration see 51 & 52 Vict. c. 65, ss. 7-9. As to the enrolment of the articles *nunc pro tunc*, see *Exp. Darville*, L. R., 2 C. P. 244; *Exp. Banyard*, L. R., 10 C. P. 638; *Re Sayer*, L. R. 10 C. P. 569. As to the stamp, see Stamp Act, 1891, sched. ARTICLES OF CLERKSHIP. As to articles of clerkship to solicitor.

It is now settled that the practice of assigning articles of clerkship is erroneous. The proper course is by mutual agreement to cancel the original articles and to enter into fresh articles, which require a stamp of 10s.; see *Exp. Adams*, 4 Ch. D. 39; 21 Sol. J. 357, 585. Assigning articles of clerkship.

As to the bankruptcy of the solicitor see Bankruptcy Act, 1883, s. 41: As to the right, in the absence of express contract, to a return of the premium on the death of the solicitor, see *Ferns v. Carr*, 28 Ch. D. 409. Bankruptcy or death of solicitor.

A covenant by an articulated clerk of a London solicitor not to transact business with his clients extends to country solicitors for whom he is agent. *Reid v. Burrows*, [1892] 2 Ch. 413.

I.

INDENTURE of APPRENTICESHIP.

THIS INDRE, made, &c., BETN A., of, &c., *master*, of the first pt; B., *apprentice*, son of C., of, &c., of the second pt; & the sd C., of the third pt, WITNETH, that in conson of the sum of £—— now pd by the sd C. to the sd A., the rect whof he doth hby acknowe & in conson also of the service of the sd B. to be done or pformed to or for the sd A., & of the covts & agrmts hinafter entd into by the sd C. & B., he, the sd A., at the reqt of the sd C., & with the consent (hby testified) of the sd B., doth hby covt & agree with the sd C., & also with the sd B. in mner follg, that is to say, that he, the sd A., will take Parties.
Covenant by master
to receive apprentice,

& rece the sd B. as his apprentice from the day of the date of these psnts for the term of — yrs, & also will durg the sd term, to the best of his power, knowledge & ability, instruct the sd B. in the trade or business of —, & in all things incident or relatg thto, in such mner as he, the sd A., doth now or shl hrafter durg the sd term use or practise the same

instruct, to provide board and lodging or, pay allowance in lieu thereof. [AND WILL durg the sd term find & provide the sd B. with good & sufft board & lodging in the house of the sd A., or “AND WILL pay to the sd B. durg the sd term or until the sooner determinon of the sd apprenticeship, the respive sums follg, in lieu of providg him with board & lodging (that is to say), the sum of £—— for the first yr of the sd term, the sum of £—— for the second yr thof, &c., payable [qrtly] on the —— day of ——, &c., with a proportionate pt thof up to the day on wch the sd apprenticeship shl terminate”]: AND

Business hours. FURTHER that the sd A. shl not require the sd B. to attend to the business or affairs of the sd A., for a longer period than —— hours in each day, unless the sd B. shl unavoidably be longer engaged by an extreme & unusual pressure of business: AND IN CONSON of the covts & agrmts hinbfe

Apprentice bound. contd on the pt of the sd A., the sd C. doth hby place & bind the sd B., & the sd B., with the consent of the sd C., doth hby place & bind himself with & to the sd A. durg the term afsd, durg all wch time the sd B. shl faithfully, honestly, & diligently serve him, the sd A., & obey & pform all his lful & reasble commands & requiremts, & shl not do any damage or injury to the sd A. or knowingly suffer the same to be done witht acquaintg him thwith, but shl in all things conduct & acquit himself as an honest & faithful apprentice ought to do: AND FOR the consons afsd, the sd C. doth hby covt & agree with the sd A., that the sd B. shl faithfully, honestly & diligently serve the sd A. as his apprentice durg the term afsd: AND ALSO that he, the sd C., his exs or ads, will at his or their own expse, find & provide the sd B. with good & sufft [board, lodging,] clothg, washg, pocket-moy, medicine & medical attendce (a), & all other necessaries, [except board & lodging as afsd] durg the sd term [& will also pay the expses of the funl of the sd B. in the case of his death

Covenant by father that son shall serve, to provide necessaries.

(a) As to medical attendance, see *ante*, p. 142.

durg the sd term] (b): [PROVD ALWAYS & it is hby agrd that in case the sd B. shl die within — calr months from the day of the date hrof, [or in case the health of the sd B. shl within that time fail, so as to incapacitate him from follg the trade or business of —, & such failure of health shl be certified by two duly qualified medical practitioners (c)], the sd A. shl repay to the sd C. the sum of £——, pt of the sd premium or sum of £—— so pd to the sd A. as afsd, & in case such death [or failure of health certified as afsd] shl happen after such — calr months, but within — yrs from the date hrof, then the sd A. shl repay the sum of £——, pt of the sd premium]: [PROVD ALSO, & it is hby further agrd, that in case the sd A. shl die bfe the expiron of the sd apprenticeship, then the exs or ads of him, the sd A., shl as soon as may be after his dece find & provide for the sd B. anor pper & suitable master follg the trade or business of —, & at their own cost assn over & bind the sd B. to such new master for such residue as shl be then unexpired of the term of his sd apprenticeship upon the same terms or upon terms equally advantageous to the sd B. as are contd in these psnts, & in default thof shl pay to the sd C. the sum of £—— for every yr & a proportionate sum for any fraction of a yr of the sd term of — yrs wch shl at the dece of the sd A. be unexpired]: [PROVD ALSO, & it is hby further agrd, that the sd A. shl permit the sd B., if he shl require the same in writg, to leave the service of him, the sd A., at the expiron of the first — yrs, or at any time

Proviso in case of son's death, &c.

Proviso in case of master's death (d).

Power for son to leave service after — years.

(b) The following provision for a change in the locality of the business seems free from the objection in *Eaton v. Western*, 9 Q. B. D. 636 (overruling *Royce v. Charlton*, 8 Q. B. D. 1):—

“PROVD ALWAYS that in case at any time & so long as the sd A. shl require the sd B. to serve his apprenticeship at any place more than — miles distant from — afsd (wch he shl be at liberty to do provd the distce does not exceed — miles thfrom) then the sd A. shl find pper and sufft board & lodging for the sd B. in the house of him the sd A. or elsewhere, & the sd C., his exs or ads, shl pay to the sd A. the sum of £—— per week towards the expses thof.”

Provision for removal of business.

As to the case of the employers being a firm which becomes split into two, see *Eaton v. Western*, *ubi supra*.

(c) See *Derby v. Humber*, L. R., 2 C. P. 247.

(d) See *ante*, p. 142.

Dismissal
on miscon-
duct (a).

thrafter, & to employ the remr of the sd term for his own use & benefit witht any interference or claim on the pt of the sd A. in or for any gains or earngs thrafter made by the sd B. in the afsd trade or business or orwise]: [PROVD ALSO, & it is hby further agrd, that in case the sd B. shl at any time durg the sd term be wilfully disobedient to the lful & reasble commands of the sd A., or shl orwise grossly misconduct himself, it shl be lful for the sd A. to dischge the sd B. from his service, provd that in such case he shl repay the sd C. the sum of £—— for every yr & a proportionate sum for any fraction of a yr of the sd term of —— yrs wch shl then be unexpired]: [AND it is hby agrd that upon the expiron of the sd apprenticeship & the dischge by the sd B. & C. of all their respive obligons to the sd A. hrunder this psnt indre shl be delivered by the sd A. to the sd B.] IN WITS, &c.

II.

ARTICLES of CLERKSHIP to a SOLICITOR, the CLERK being OF AGE. VARIATION where he is UNDER AGE and his FATHER joins (b).

Parties.	ARTICLES OF AGRMT made this —— day of ——, BETN [A., of, &c., <i>father of the clerk</i> , of the first pt,] B., of, &c., <i>clerk</i> , of the one [second] pt, & C., of, &c., <i>solor</i> , of the other
Recital.	[third] pt: WHAS the sd B. [A.] has applied to the sd C. to accept [his son] the sd B. as an articed clerk, wch the sd C. has agrd to do in mner & on the terms hinafter appearg:
Clerk articed.	NOW THESE PSNTS WITS that, in psuance of the sd agrmt the sd B. [of his own free will & with the consent of his father, the sd A.] doth hby place & bind himself clerk to the sd C., to serve him from the day of the date hrof for the term of <i>five</i>
Covenant for service.	yrs: AND THE SD B. [A.] doth hby [for himself & also on behalf of his sd son B.] covt with the sd C. his exs & ads, in mner follg, that is to say, that he, the sd B., shl & will faith-

(a) See *Westwick v. Theodor*, L. R., 10 Q. B. 224.

(b) As to articles of clerkship, see *ante*, p. 143. See also the form recommended by the Incorporated Law Society of Liverpool in 35 Sol. J. 805.

fully & diligently serve the sd C. as his clerk in the profession of a solor of the Supreme Ct, from the day of the date hrof durg the sd term of *five* yrs, & that he, the sd B., shl not at any time cancel, injure, obliterate, destroy, spoil, waste, embezzle, spend, or make away with any of the books, papers, writgs, moys, stamps, or other ppty of the sd C. or of the firm in wch he is or may for the time being be a ptner, or of any ptner thrin, or of any of his or their clients or employers, wch shl be deposited in his or their hands, or entrusted to the care, custody, or posson of him or them or of the sd B., AND THAT in case he, the sd B., shl act contrary to the covt lastly hinbfe contd, or if the sd C., his exs or ads, or his firm for the time being, or any ptner thrin for the time being, shl sustain or suffer any loss, damage, or prejudice, by the misbehaviour, neglect, or impper conduct of the sd B., he, the sd B. [A.], his exs or ads, shl make good & reimburse such loss to the sd C., his exs or ads, or such firm or ptner as afsd, as the case may be, or refund the amt or value thof: AND FURTHER, that he, the sd B., shl & will at all times keep the secrets of the sd C., & of such firm as afsd & of every ptner thrin, & of his or their business, & shall & will at all times durg the sd term of *five* yrs, readily & cheerfully obey & exte his or their lful & reasble commands, & shl not desert or absent himself from the service or employmt of the sd C. at any time durg the sd term witht his consent, or that of some member of the firm of wch he may for the time being be a member, first obtained, & shl, from time to time, & at all times durg the sd term, conduct himself with all due diligce, honesty, sobriety, & temperce, & that he, the sd B., will truly & honestly serve him, the sd C., at all times durg the sd term as a faithful clerk ought to do in all things whatsr in the mner above specified: IN CONSON whof & of the sum of £—— by the sd B. [A.] to the sd C. now pd (the rect whof the sd C. doth hby acknowe), he, the sd C., doth hby covt with the sd B. [A.], his exs & ads, in mner follg, that is to say, that he, the sd C., will accept the sd B. as his clerk, & also will teach & instruct, or cause to be taught & instructed, the sd B. in the practice & profession of a solor of the Supreme Ct wch he the sd C., now doth or shl at any time hrafter durg the sd term use or practise, & also will at the expiron of the sd term use his best means & endeavours at the

Not to injure property.

Make good any loss.

Keep secrets.

Obey orders.
Not absent himself.

Covenant by solicitor

to accept clerk, teach,

cause clerk to be admitted.

Proviso for
death of
solicitor
(a).

request, costs, & chges of the sd B., to cause & procure him, the sd B., to be admitted & sworn a solor of the Supreme Ct, provd that he, the sd B., shl have well & faithfully served his sd intd clerkship, & shl have successfully passed all such examinons as articulated clerks are by law or custom bound to do bfe being admitted to practise as solors. [AND FURTHER that in case he, the sd C., shl retire from practice or die bfe the expiron of the sd term of *five* yrs, the sd C., his exs or ads, shl within one month after his retiremt or death pay or cause to be pd to such pson or psons as shl agree to accept the sd B. as his or their clerk for the residue of the sd term, the sums of moy follg, that is to say, in case such retiremt or death shl happen before the expiron of the first yr of the sd term, the sum of £——, & in case the same shl happen after the first yr & bfe the expiron of the second yr thof, the sum of £——, &c.]
IN WITS, &c.

III.

AGREEMENT *enabling an APPRENTICE to transfer or determine his APPRENTICESHIP.*

Parties.	ARTICLES OF AGRMT made, &c., BETN A., of, &c., <i>master</i> ,
Recital of apprentice- ship.	of the one pt, & B., of, &c., <i>apprentice</i> , of the other pt: WHAS
Agreement to give power.	by an indre, &c., the sd B. bound himself apprentice to the sd A., to learn his business of ——, from the day of the date thof
Covenant by master	for the term of <i>seven</i> yrs: AND WHAS it has been agrd that the sd B. shl have power to require an assnmt of, or to determine the sd service & apprenticeship as hinafter mentd: NOW THESE PSNTS WITS that, in psuance of the sd agrmt it is hby agrd, & parlarly the sd A. hby covts with the sd B., that in case he the sd B., shl at any time hrafter, durg the sd term of <i>seven</i> yrs, be desirous of servg the remr of the sd term, or of learnng the sd business of ——, with some pson other than the sd A., who shl be a resident in England, & shl give notice in writg of such his desire to the sd A., then the sd A. shl & will on the rect of such notice, at the cost of the sd B., assn &
on notice to assign,	

(a) See *ante*, p. 143.

transfer unto such pson being a resident in England, as the sd B. shl, by any such notice as afsd, nominate for that ppose, all the residue wch shl be then to come of the sd term of *seven* yrs, & all right & title to the service of the sd B., durg such residue of the same term : AND ALSO that in case the sd B. shl at any time hrafter durg the sd term of *seven* yrs be desirous of determing the apprenticeship or service by the sd recited indre contracted to be served or pformed, & give notice in writg of such desire as last afsd to the sd A., then & in that case immedly after any such notice as last afsd shl have been given, the sd indre of, &c., & the apprenticeship & service thby contracted to be served & pformed, & every covt, agrmt, & thing thrin expd or contd shl cease & become void, but witht prejudice to any right of action wch may have arisen in respt of any breach thtofore committed of any of such covts or agrmts. IN WITS, &c.

to deter-
mine.

ARBITRATION.

PRELIMINARY NOTE.

- Arbitration Act, 1889.** THE earlier enactments relating to arbitration have been superseded by the Arbitration Act, 1889 (52 & 53 Vict. c. 49). By this Act (which relates to England only) it is provided (s. 1) that every submission, unless a contrary intention is expressed therein, shall be irrevocable, except by leave of the Court or a judge, and shall have the same effect as if made an order of Court. It is therefore now unnecessary to provide, as it was before the Act, for making the submission or award a rule of Court. As to the law before the Act with respect to the submission being revocable, see the third edition of this work, Vol. I., p. 166, note. And see as to s. 1 of the Act and the jurisdiction to enforce submissions, *Re Smith*, 25 Q. B. D. 545.
- Submission irrevocable.**
- Provisions implied in submission.** By s. 2 (which applies to all submissions, whether made before or after the Act, *Re Williams*, [1891] 2 Q. B. 267), it is enacted that a submission, unless a contrary intention is expressed therein, shall be deemed to include the provisions set out in the 1st schedule to the Act, so far as they are applicable to the reference under the submission, namely:—
- Number of arbitrators.** a. If no other mode of reference is provided, the reference shall be to a single arbitrator.
- b. If the reference is to two arbitrators, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award.
- Time for making award.** c. The arbitrators shall make their award in writing within three months after entering on the reference, or after having been called on to act by notice in writing from any party to the submission; or on or before any later day to which the arbitrators, by any writing signed by them, may from time to time enlarge the time for making the award.
- d. If the arbitrators have allowed their time or extended time to expire without making any award, or have delivered to any party to the submission, or to the umpire, a notice in writing, stating that they cannot agree, the umpire may forthwith enter on the reference in lieu of the arbitrators.
- e. The umpire shall make his award within one month after the original or extended time appointed for making the award of the arbitrators has expired, or on or before any later day to which the umpire by any writing signed by him may from time to time enlarge the time for making his award.
- Examination of parties and production of documents.** f. The parties to the reference, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbitrators or umpire, on oath or affirmation, in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbitrators or

umpire, all documents within their possession or power which may be required, and do all other things which during the proceedings on the reference the arbitrators or umpire may require.

g. The witnesses on the reference shall, if the arbitrators or umpire think fit, be examined on oath or affirmation.

h. The award of the arbitrators or umpire shall be final and binding on the parties and the persons claiming under them. Award final.

i. The costs of the reference and award shall be in the discretion of the arbitrators or umpire, who may direct to and by whom and in what manner such costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof, and may award costs to be paid as between solicitor and client. This empowers the arbitrators to settle the amount of the costs, including their own fees, so as not to be subject to taxation (*Re Stephens*, 36 Sol. J. 464; *Re Prebble*, [1892] 2 Q. B. 602). Costs

S. 3 provides for the case of the reference being made to an official referee. S. 4 confers upon the Court or a judge power to stay legal proceedings by one party to a submission against the other party. As to the discretion of the Court under this section where a question of law is involved, see *Re Carlisle*, 44 Ch. D. 200. Legal proceedings.

S. 5 enacts that in any of the following cases—(a) where a submission provides that the reference shall be to a single arbitrator and all the parties do not after differences have arisen concur in the appointment of an arbitrator; (b) if an appointed arbitrator refuses to act, or is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties do not supply the vacancy; (c) where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator and do not appoint him; (d) where an appointed umpire or third arbitrator refuses to act, or is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties or arbitrators do not supply the vacancy:—any party may serve the other parties or the arbitrators, as the case may be, with a written notice to appoint an arbitrator, umpire, or third arbitrator: and if the appointment is not made within seven clear days after service of the notice, power is given to the Court or a judge, on the application of the party who gave the notice, to make the appointment (see *Re Eyre*, [1892] 1 Q. B. 136). Power of Court to appoint arbitrators.

By s. 6 where a submission provides that the reference shall be to two arbitrators, one to be appointed by each party, then, unless the submission expresses a contrary intention, (a) if either of the appointed arbitrators refuses to act, or is incapable of acting, or dies, the party who appointed him may appoint a new arbitrator in his place; or (b) if, on such a reference, one party fails to appoint an arbitrator, either originally or by way of substitution, for seven clear days after the other party, having appointed his arbitrator, has served the party making default with notice to make the appointment, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference, and his award shall be binding on both parties as if he had been appointed by consent. But the Court or a judge may set aside any appointment made in pursuance of this section. Provision for arbitration of one party acting alone.

S. 7 provides that the arbitrators or umpire acting under a submission shall, unless the submission expresses a contrary intention, have power Powers of arbitrators.

(a) to administer oaths to or take the affirmations of the parties and witnesses appearing; (b) to state an award as to the whole or part thereof in the form of a special case for the opinion of the Court; and (c) to correct in an award any clerical mistake or error arising from any accidental slip or omission.

Ss. 4, 5, and 6 do not apply where there is an agreement to appoint three arbitrators, one by each of the parties, and the third by the two so appointed (*Re Smith*, 25 Q. B. D. 545).

"Submission" is defined (s. 27) as a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not.

Ss. 8—12 confer certain ancillary powers, *e.g.* to any party to a submission to summon witnesses by subpoena; to the Court or a judge to enlarge the time for making an award, and to remit an award for reconsideration; to the Court to set aside an award or remove an arbitrator or umpire in case of misconduct.

Ss. 13—17 deal with references under order of Court; and the remainder of the Act consists of general provisions as to the working of the Act.

By s. 25 the Act is made to apply to an arbitration commenced after the Act under an agreement or order made before the commencement of the Act. As to this, see per Lord Esher, M.R., in *Re Williams*, [1891] 2 Q. B. 259.

The Court has no power to set aside or remit an award made under a submission by consent of the parties (*Darlington, &c., Co. v. Harding* [1891] 1 Q. B. 245).

Special provisions as to arbitration are contained in many Acts relating to companies and public bodies, which must be conformed to where they apply; see the special Acts enumerated in the index to the statutes under ARBITRATION. As to the applications of the provisions of the Act of 1889 to arbitration under special Acts, see *Tabernacle, &c., Society v. Knight*, [1892] A. C. 298.

As to the difference between a mere appraisalment by valuers and an arbitration, see *Re Dawdy*, 15 Q. B. D. 426; *Re Carus-Wilson*, 18 Q. B. D. 7; *Re Hammond*, 34 Sol. J. 437; Dart, V. & P. 260.

See further on this subject Russell on Arbitration.

As to the power of executors and trustees to refer to arbitration, see the Trustee Act, 1893, repealing the Conv. Act, 1881, s. 37, and re-enacting it by s. 21.

As to Scotland, see 57 & 58 Vict. c. 13.

CLAUSES *as to referring* DISPUTES *to* ARBITRATION (a).

For refer-
ence of
future dis-
putes to

I. AND IT IS HBY AGRD & DECLD that if at any time hrafter any dispute, diffce, or question shl arise betn the sd pties hto, or their respive [hrs] exs, ads, or assns, or any of them, touchg

As to forms
in text.

(a) This and the three following forms of clauses for reference of future disputes are intended for insertion in deeds or agreements not under seal, and may be used, with the verbal alterations indicated, where there are more than two parties, and also, with little if any alteration, where a company or corporation is a party. The word "heirs" is of course only

the constron, meang, or effect of these psnts, or any clause or thing hrin contd, or the rights or liabilities of the sd pties resply or their respive [hrs] exs, ads, or assns, or any of them, under these psnts, or orwise howsr in relon to the premes, then every such dispute, diffce, or question shl be referred to the arbitron of two indifferent psons, one to be appted by each pty to the referce, or an umpire to be appted by the arbitrors in writg [bfe enterg on the business of the referce]:

AND IF eir pty shl refuse or neglect to appt an arbitrator within *twenty-one* days after the other pty shl have appted an arbitrator, & shl have served a written notice upon the first mentd pty requirg such pty to make such apptmt, then the arbitrator appted as afsd shl, at the reqt of the pty apptg him, pceed to hear & determine the mres in diffce as if he were an arbitrator appted by both pties for that ppose: AND THE award or determinon wch shl be made by the sd arbitrors, arbitrator, or umpire, shl be final & bindg upon the sd pties hto resply, & their respive [hrs], exs, ads, & assns, so as such arbitrors or arbitrator shl make their or his award in writg within *forty* days next after the referce to them or him, or on or bfe any later day to wch the sd arbitrors or arbitrator, by any writg signed by them or him, shl enlarge the time for makg their or his award, & so as such umpire shl make his award or determinon in writg within *twenty* days next after the origl or extended time appted for makg the award of the sd arbitrors or arbitrator shl have expired, or on or bfe any later day to wch the umpire shl, by any writg signed by him, enlarge the time for makg his award: AND ALSO that no action or legal pcdgs shl be commced or prosecuted by eir [any] of the sd pties hto or his [hrs], exs, ads, or assns, agst the [any] other of them, his [hrs], exs, ads, or assns, touchg any of the sd mres in diffce, unless the pty to be made deft to such action or pcdgs shl have refused or neglected to refer such mres to arbitron,

two arbit-
rators or
an umpire.
Full form.

One arbi-
trator to
proceed if
second not
appointed.

Award to
be final.

No legal
proceed-
ings to be
taken.

required in the case of real estate, and the word "assigns" will not always be appropriate. In the case of a contract to be performed in England the full form No. I (which was at one time in use) is now entirely superseded by the statutory provisions (see above), and the short forms II., III., and IV., are usually sufficient and effectual; but where the deed may have to be performed or sued upon abroad, it may be proper to insert the full form or some modification of it.

Parties to
be exam-
ined.

Costs.

The same.
Short form
(in reliance
on the
Arbitration
Act, 1889).
Reference
to statutory
provisions
(c).

The same.
For refer-
ence to
three arbi-
trators.

psuant to the provon hinfte contd, or unless the time limd for makg such award as afsd shl have expired witht any such award being made: AND ALSO that the respive pties to such referce, & all psons claimg through them resply (a), shl submit to be examined by the sd arbitrors, arbitror, or umpire upon oath or affirmon in relon to the mres in dispute, & shl produce bfe the arbitrors, arbitror, or umpire all books, deeds, papers, accts, writgs, & documts within the posson or power of the sd respive pties wch may be required or called for, & do all other things wch durg the pcdgs on the sd referce the sd arbitrors, arbitror or umpire may require: AND THAT the witnesses on the referce shl, if the arbitrors, arbitror, or umpire shl think fit, be examined on oath or affirmon: AND THAT the costs of the referce & award shl be in the discron of the arbitrors, arbitror, or umpire, who may direct to & by whom & in what mner the same or any pt thof shl be pd, & with power to tax or settle the amt of costs to be so pd or any pt thof, & to award costs to be pd as betn solor & client.

II. AND IT IS HBY AGRD that any & every dispute, diffee, or question wch shl at any time arise, &c., *as in Form I.*, shl be refd to the arbitron of two psons (one to be appted by each pty to the referce) or their umpire (b): And this shl be deemed to be a submission to arbitron within the Arbitron Act, 1889, or any statutory modificon or re-enactmt thof for the time being in force, the provons whof shl apply as far as applicable.

III. AND IT IS HBY AGRD that any & every dispute, diffee, or question, wch may at any time arise betn, &c., *as in Form I.*, shl be refd to the arbitron of three psons, of whom one shl be appted by each pty to the referce, & the third shl be appted in writg by the two arbitrors so appted bfe commencg the business of the referce, & the decision of any two of the arbitrors shl be bindg: *Add the provon at p. 153, for the event of eir pty failg to appt an arbitror (d), mutatis mutandis, substitutg*

(a) If a company or corporation is a party, this should be extended to their directors, members, secretary, clerks and officers, as the case may be.

(b) The words "or their umpire" might be omitted in reliance on the Arbitration Act, 1889, s. 2; but it is usual and better to insert them.

(c) The express reference to the statute, though unnecessary, is usual.

(d) See *Re Smith*, 25 Q.B. D. 545, *ante*, p. 152.

“arbitrators” for “arbitrators, arbitrator, or umpire;” & *reference to the statutory provisions as in Form II.*

IV. AND IT IS HBY AGRD that any & every dispute, diffce, or question, wch may at any time arise betn, &c., *as in Form I.*, shl be refd to the arbitron of A., of, &c., or him failg, of some other competent pson to be named by, *some official pson, e.g., the President of the Institute of —, or of the — Chamber of Commerce, or the Chairman of the — Coy Council (f); or to one of the official referees: add reference to statutory provisions as in Form II.*

The same.
For refer-
ence to a
sole arbi-
trator (e).

PRECEDENTS.

I.

AGREEMENT *referring existing specified DISPUTES between the Parties to the ARBITRATION of one or more persons.*
VARIATION, *where all other MATTERS in difference are referred (g).*

MEMDUM of AGRMT made the — day of —, BETN A., Parties.
of, &c., of the one pt, & B., of, &c., of the other pt: WHAS Recital.
disputes & diffces have arisen & are still subsistg betn the sd
A. & B. relative to, *state the specific mres in dispute*: NOW IT Agreement
IS HBY AGRD that the sd disputes & diffces [& all mres in to refer.
diffce betn the sd pties wch now exist or may arise at any time
bfe the last ten days immedly precedg the day wch shl be
appted by the arbitrator [or arbitrators] hinafter mentd for the
first sittg in the arbitron] shl be refd, & the same are hby
refd to the arbitron & determinon of K., of, &c., [or, K., of
&c., an arbitrator nominated by the sd A., & L., of, &c., an
arbitrator nominated by the sd B., or in case they shl not agree
in makg an award, or in determng any mre or mres hby refd

(e) As to a reference to a sole arbitrator to be appointed by the parties, see *Re Eyre*, [1892] 1 Q. B. 136. As to a reference to an official referee, see the Arbitration Act, 1889, s. 3.

(f) See *Re Wilson*, [1892] 1 Q. B. 81.

(g) Stamp if under hand only 6d., if under seal 10s. The provisions relating to an umpire and to the time for making the award, might generally be omitted in reliance on the Arbitration Act, 1889; see *ante*, pp. 150 *et seq.*

Time for
arbitrators
to make
award.

Time for
umpire
to make
award.

to them, then, as regards the mre or mres as to wch there shl be such disagrmt, to the umpirage of such pson as the sd arbitrors shl in writg under their hands bfe they enter on the business of the referce appt]: Provd that the sd arbitrator [arbitrors] make & publish his [their] award in writg signed by him [them] concerng the mres refd, ready to be delivered to the sd pties or eir of them, or, if they or eir of them shl be dead bfe the makg of the award, to their or his psonal repves who shl require the same (a), on or bfe the — day of — next, or on or bfe any subseqt day, not later than the — day of — next, to wch the sd arbitrator [arbitrors] shl by any writg from time to time enlarge the time for makg the sd award: [AND so as the sd umpire make & publish his award in writg signed by him concerng the mres refd to him, ready to be delivered as afsd, within — days after the origl or extended time appted for makg the award of the sd arbitrors shl have expired, or on or bfe any subseqt day, not being more than — days from such last mentd time, to wch the sd umpire shl by any writg signed by him enlarge the time for makg his award]: *Add referce to statutory provons as at p. 154, Form II.* IN WITS, &c.

II.

AGREEMENT *for* REFERENCE *of Specified* DISPUTES *to Two ARBITRATORS or their Umpire. A Short Form without Recitals.*

Agreement. *PARTIES*, A., 1; B., 2. WHAS disputes & diffces have arisen & are subsistg betn the sd pties relative to, *here state the specific mres in dispute*: NOW IT IS HBY AGRD that it shl be refd to K., of, &c. (an arbitrator appted by the sd A.), & L., of, &c. (an arbitrator appted by the sd B.), or their umpire to settle & determine all the mrs in diffe betn the sd pties as afsd: *Add referce to statutory provons as at p. 154, Form II.* IN WITS, &c.

(a) As to such a provision in a case of tort, see *Bowker v. Evans*, 15 Q. B. D. 565.

III.

REFERENCE *of all Matters in DISPUTE to one* ARBITRATOR. *Short Form.*

WE, A., of, &c., & B., of, &c., do hereby refer all mres in dispute betn us to the award & determinon of K., of, &c.:
Add referce to statutory provons as at p. 154, Form II. In
WITS, &c.

IV.

AGREEMENT *for reference to a SOLE arbitrator of a* CLAIM *against a COMPANY in LIQUIDATION.*

AGRMT made the — day of —, BETN A., of, &c., Parties.
liquidator of the — Co, Limd, on behalf of the sd Co of the
one pt, & B., of, &c., of the other pt: WHAS the sd Co is in Recitals.
course of voluntary windg up & the sd A. has been appted Company
liquidator for the ppose of such windg up: AND WHAS the sd in liqui-
B. claims to be a credor of the sd Co, but such claim is dis- dation.
puted: AND WHAS it has been agrd that the sd claim & any Claim.
other mres in diffe betn the sd pties should be refd to Agreement
arbitron in mner & subjt as hinafter mentd: NOW IT IS to refer.
HBV AGRD as follows: Agreement.

1. It shl be refd to E., of, &c., to determine & award Claim to be
whether any & what sum is due & owg from the sd Co to referred.
the sd B., or from the sd B. to the sd Co, & to decide all
other mres, if any, in diffe betn the sd pties & also to award
how & by whom the costs of & incidental to the sd referce Costs.
& award (includg the costs of this agrmt) are to be borne & pd,
& to fix the amt of such costs, provd the award in writg of the Time for
sd E. in the premes be made within — calr months from the making
date hrof, or within such extended time as by agrmt of the award.
pties, or by order of the Chancery Divon of the High Ct of
Justice, shl from time to time be allowed in that behalf, &
the award to be so made by the sd E. shl be final &
conclusive.

Agreement
to be sub-
ject to
sanction of
general
meeting.

2. THIS agrmt is condonal on the same being sanctioned by an extraordinary resolon of the sd Co passed psuant to the provons of the Cos Act, 1862 (a), at a meetg of the Co to be held within one calr month from the date hrof, wch meetg the sd A. hby undertakes to summon accdly, & in the event of this agrmt not being so sanctioned, the same shl be void. IN WITS, &c.

V.

· AGREEMENT *referring matters in DISPUTE in an ACTION to the ARBITRATION of one or more named ARBITRATORS or an UMPIRE (b).*

PARTIES, A., 1; B., 2.

Recital.

Agreement
to stay pro-
ceedings,

and refer.

WHAS an action is now pendg in the — Divon of the High Ct of Justice, whrin the sd A. is plt, & the sd B. deft: NOW IT IS HBY AGRD that all pcdgs in the sd action shl be stayed, except such pcdgs as may be necy to carry out this agrmt for referce, & that in order to ascertain, settle, & adjust all accts, claims, & demands in dispute in the sd action, the same shl be refd & the same are hby refd to the arbitron & determinon of K., of, &c. [K., of, &c., an arbitror nominated by the sd A., & L., of, &c., an arbitror nominated by the sd B., or in case they shl not agree in makg an award, or in determing any mre or mres hby refd to them, then, as regards the mre or mres as to wch there shl be such disagrmt, to the umpirage of M., of, &c., or “of such pson as the sd arbitrors shl in writg under their hand bfe they enter on the business of the sd referce appt,” or, “of such pson as the sd arbitrors shl, from time to time as soon as conveniently may be after such diffce of opinion shl arise, appt in writg”]. IN WITS, &c.

(a) If the winding up is by the Court or under the supervision of the Court, the sanction of the Court must be obtained to this agreement. See the Act, s. 159. As to references to arbitration by a company not in liqui-
dation, see the Act, ss. 72, 73.

Action
pending

(b) As to the proceedings and practice in case of a reference where an action is pending, see the notes on ARBITRATION in the “Annual Practice.”

VI.

BOND to abide by the AWARD of one or more named persons, as to SPECIFIED MATTERS, or all MATTERS in DIFFERENCE between the parties (c).

Obligon of Bond from A. to B.; see BONDS.

WHAS disputes & diffces have arisen & are pendg betn the sd A. & B. concerng, *state the specific mres in dispute*: AND WHAS the sd A. & B. have agrd to refer the sd disputes & diffces [& all other mres whatsr in diffce betn them] to arbitron in mner hinafter appearg, & to exte mutual bonds in that behalf: NOW THE CONDON, &c., that if the above bounden A., his hrs, exs, & ads, shl duly obey & pform the award or decision of K., of, &c., or, "K. of, &c., & L., of, &c.," or, "K., of, &c., L., of, &c., & M., of, &c., or any two of them," concerng the afsd disputes & diffces [& all other mres whatsr now in diffce betn the sd A. & B.] so as the award of the sd arbitror, or, "arbitrors" be made in writg, ready to be delivered to the sd A. & B. or eir of them, or if they or eir of them shl be dead bfe the makg of the award to their respive psonal repves who shl require the same, on or bfe the — day of — next, &c., *as in Precedent I.*: [AND in case the sd arbitrors shl not agree in makg an award, or, "in determing any of the mres afsd," then, if the sd A., his hrs, exs, & ads, shl duly obey & pform the award & decision of X., or, "of such pson as the sd arbitrors shl in writg under their hands bfe they enter on the business of the sd referce appt," concerng the premes, or, "concerng the mre or mres as to wch there shl be such disagrmt of the sd arbitrors as afsd," so as the sd umpire make & publish his award or umpirage in writg concerng the mres reld to him, ready to be delivered as afsd, within — days, &c., *as in Precedent I.*], then, &c. (d).

Recitals.
Disputes.
Agreement for reference.
Condition to perform award.
Umpire.
Submission by mutual bond.

(c) As to submission to arbitration by mutual bond, see Russell on Arbitration. The stamp depends on the penalty, but will not exceed 10s. See the Stamp Act, 1891, Sched. I. tit. BOND.

(d) To be accompanied by a similar bond from B. to A.

MISCELLANEOUS CLAUSES *in* AGREEMENTS to REFER.

Statutory provisions to be incorporated (a).

I. ALL the provons of the Arbitron Act, 1889, & of any statutory modificon or re-enactmt thof for the time being in force resptg referces to arbitron, wch may be applicable to the case, shl apply to this referce (except so far as the same are hby exply excluded or varied).

Evidence taken by arbitrators may be acted on by umpire.

II. THE sd umpire shl be at liberty to act upon all or any pt of the evidce taken bfe the sd arbitrors as reported by them to him, & to make his award thrupon [unless eir of the pties to the referce shl require any witses to be reheard or any other evidce to be retaken, or shl tender any fresh evidce, in wch case the sd umpire shl hear or examine such witses or evidce].

Power to umpire to sit with arbitrators.

III. It shl be lful for the umpire to sit & hear evidce in conjunction with the arbitrors, & the award (if any) of such umpire may be based upon such evidce, although at the time when it shl be taken the arbitrors may not have differed in opinion on the mres refd to them.

Power to employ accountant.

IV. THE sd arbitrors or umpire shl be at liberty to appt & employ an acctant to assist them or him, at the expse of the sd pties, who shl be liable to such acctant for his reasble remuneron, AND as betn the sd pties the fees of such acctant shl be borne & pd as the sd arbitrors or umpire shl direct, & such acctant may be required to make his solemn declon, accdg to the statute in that behalf, of the truth of the acct or statemt to be made out by him.

Power to cause maps, &c., to be made.

V. THE sd arbitrors or umpire shl be at liberty to make or cause to be made maps or plans of the sd lands, houses, & premes, & to measure & survey or value the same, or cause the same to be measured & surveyed or valued, & to employ a surveyor, valuer, or other pson for such ppose at the expse of the sd pties, wch expse shl as betn the sd pties be borne & pd as the sd arbitrors or umpire shl direct.

Power to cause works to be done under supervi-
sion of sur-
veyor (b).

VI. THE sd arbitrors or umpire shl be at liberty in & by the award to direct that any bldgs or works, wch they or he

(a) See p. 154, note (c).

(b) See *Tomlin v. Fordwich* (*Mayor, &c.*), 5 A. & E. 147.

may award to be erected or exted, shl be erected or exted under the supervision or diron of such surveyor as they or he shl appt in that behalf, & to determine in what mner the fees of such surveyor shl, as betn the sd pties, be borne & pd.

VII. THE sd arbitrors or umpire shl be at liberty to take the opinion of counsel upon any question arisg in the sd referce, & to state a case for such ppose, & the expse thof shl as betn the sd pties be borne & pd as the sd arbitrors or umpire shl direct.

Power to take opinion of counsel.

VIII. THE sd arbitrors or umpire may state any special case, facts, or circes, previous to makg their or his award, or in the award, or in any septe paper or writg accompanying the award, so that the opinion or judgmt of the — Divon of the High Ct of Justice may be had or taken thron.

Power to state case for opinion of Court (c).

IX. THE sd arbitrors or umpire shl have power to award & direct that the sd pties hto or any one or more of them or their respive hrs, exs, ads, or assns, shl exte & do such reles, convces, assurances, & things as the sd arbitrors or umpire shl think fit, & such reles, convces, assurances, & things shl be exted & done accdly.

Power to direct execution of deeds.

X. THE sd arbitrors or umpire shl be at liberty to direct judgmt to be entd for the plttf or deft in the sd action, or to direct all further pcdgs in the sd action to be discontinued or stayed, or to direct the sd action to be dismissed with or witht costs, or to direct such pcdgs to be taken in or with respt to the sd action as to the sd arbitrors or umpire shl seem fit.

Power to direct entry of judgment.

XI. THE sd arbitrors or umpire shl have full power in all respts to award & direct what shl be done by the sd pties resply in relon to the mres in diffe.

General power to direct what shall be done.

XII. THE sd arbitrors or umpire may from time to time make one or more septe or interim award or awards as to any of the mres in diffe, wch septe or interim award or awards shl be observed & pformed witht waitg for any other award

Power to make separate awards (d).

(c) See the Arbitration Act, 1889, s. 7.

(d) The condition that only one award shall be made is implied in all cases, unless the contrary is expressed or implied in the submission: *Gould v. Staffordshire, &c., Co.*, 5 Ex. 214, 223.

One award to be made.

or awards, or the final award of & concerning the mres in diffce, & notwg that such other mres in diffce shl not be determined, & may make their or his award or awards witht any limiton as to time.

Power of arbitrators to proceed *ex parte* (a).

XIII. THE sd arbitrors or umpire shl be at liberty, in case of the non-attendce of eir of the sd pties or of their witses after — clear days' previous notice in writg under the hand of the sd arbitrors or umpire, given to the sd pties resply or their respive solors or agents, or left at or sent by post to their respive offices or places of business, notifying the time & place of meetg, to pceed *ex parte* with the sd referce.

Provision for appointment of new arbitrators (b).

XIV. IN case the sd K., *one arbitrator*, shl die, or neglect, or refuse, or become incapable to act as arbitrator bfe an award shl have been made as to all the mres reld as afsd, then the sd A., his [hrs] exs, ads, or assns, shl forthwith nominate in writg some other pson to be arbitrator in the place of the sd K., & so in like mner upon the dece, or neglect, or refusal to act, or incapacity, of any arbitrator from time to time succeedg to the place of the sd K.: AND the sd B., his [hrs] exs, ads, or assns, shl in any of the like events nominate in writg an arbitrator in the place of the sd L., or of any arbitrator succeedg to his place, & every arbitrator so apptd shl have the same powers & authorities as the arbitrator in whose place he shl have been appted.

Award not to be set aside (c).

XV. AND no award or decision of the sd arbitrors or umpire shl be set aside or attempted so to be by reason or on acct of any technical or legal defect therein, or any informality, omission, delay, or error of law or fact or of pcdg in or about the same or in relon thto, or on any other ground, or for any pretce, suggestion, chge, or allegon of fraud, collusion, or confederacy.

(a) See *Wood v. Leake*, 12 Ves. 412.

(b) This clause is probably superfluous.

(c) A clause in this form (in a building contract) was upheld in *Tullis v. Jacson*, [1892] 3 Ch. 441.

VII.

REVOCATION of SUBMISSION to ARBITRATION (d).

TO ALL TO WHOM, &c., A., of, &c., sends greetg. *Recite*
procon in articles of agrmt betn A. & the — Co to refer
disputes betn A. & the Co to B. & C., or one of them: NOW THESE PSNTS WITS that the sd A. doth hby revoke &
 make void the sd agrmt for a referce of any disputes or diffces to the award of the sd B. & C., or one or eir of them, by or in the sd articles of agrmt contd, & also all & every authorities & authority wch under or by virtue of the sd articles of agrmt wd or might have orwise been vested in the sd B. & C. or one or eir of them or any other pson or psons whomsr, to determine or decide any disputes or diffces whatsr betn him, the sd A., & the sd Co: AND THE sd A. doth hby declare that he, the sd A., will not be a pty to or be concluded by any award wch the sd B. & C., or eir of them or any other pson or psons whomsr, shl make or attempt to make of or concerng such disputes, diffces, or mres, or any of them in anywise howsr. IN WITS, &c.

Revoca-
tion.Declaration
that award
shall not be
binding.

VIII.

APPOINTMENT of an ARBITRATOR.

To Mr. —.

I hby appt you arbitror to act on my behalf in respt of certn disputes & diffces wch have arisen betn me & — under the provons of an indre dated, &c.; AND I hby inform you that by a notice in writg, bearing even date hwith, I have called upon the sd — to nominate & appt an arbitror to act on his behalf in respt of the bfe mentd disputes & diffces existg betn us. As wits my hand this — day of —.

(d) In cases coming within the Arbitration Act, 1889, the submission would now be irrevocable; see s. 1, *ante*, p. 150. See another form of revocation, together with a notice thereof to the arbitrator, in *Fraser v. Ehrenspurger*, 12 Q. B. D. 311.

IX.**NOTICE to go to ARBITRATION, and of APPOINTMENT of an ARBITRATOR (a).**

To Mr. —.

TAKE NOTICE that disputes & diffces havg arisen betn us concerng certn mres under the provons of an indre, &c., I desire to have the same settled by arbitron, accordg to the provon in the sd indre in that behalf contd: AND further, that I have apptd Mr. —, of —, to be the arbitror on my behalf: AND further, that I call upon you, within seven days from the service of this notice on you, to name an arbitror to act on your behalf in the mre of the sd disputes & diffces: AND further, that if you shl neglect to name an arbitror to act on your behalf within such seven days, then the afsd disputes & diffces betn us will, accdg to the provon in the sd indre in that behalf contd, stand refd to the sd — alone. As WITS, &c.

X.**NOTICE to CONCUR in the Appointment of a SOLE Arbitrator (b).**

To Mr. —.

IN the mre of an arbitron betn A. & B.

TAKE notice that you are hby required to concur with me the undersigned in the appmt of a sole arbitror to act in the above mentd mre for the pposes of the submission to arbitron made by certn articles of agrmt, dated, &c. & made, &c., psuant to & in accordce with clause — of such agrmt. As WITS, &c.

(a) See the Arbitration Act, 1889, s. 6.

(b) See the Arbitration Act, 1889, s. 5, *ante*, p. 151; *Re Eyre*, [1892] 1 Q. B. 136.

XI.

AGREEMENT *for reference to a SOLE ARBITRATOR to settle the amount to be paid by a SCHOOL BOARD for PURCHASE-MONEY, &c., under the LANDS CLAUSES CONSOLIDATION ACT, 1845 (c).*

AGRMT made, &c., betn A. & B. (hinafter called the vendors), of the one pt, & The School Board for — (hinafter called the Board), of the other pt. *Recite vendors' title subj't to leases*: AND WHAS by virtue of the Elementary Educon Acts, 1870 & 1873, & of the public Acts incorpd thwith, the Board require to pchase & take of the vendors the sd land & premes coloured — on the sd plan as the same are parlarly desc'd in the schdle hto: AND WHAS the vendors have agrd with the Board to sell the sd lands & premes to the Board, & to refer the question of the amt to be pd by the Board to the vendors in respt thof to the sole arbitron of X., of, &c., an able practical surveyor: NOW THESE PSNTS WITS that, in psuance of the powers & provons contd in the sd Elementary Educon Acts & the Acts incorpd thwith as afsd, & of any other power enablg them resply in that behalf, & in psuance of the sd agrmt, the vendors & the Board do resply hby nominate & appt the sd X. to be the sole arbitror accdg to the provons of the sd Acts, to settle & determine by his award the amt of the pchase-moy & compenson to be pd by the Board for the pchase of the freehd free from incumbces of the sd pce of land & premes so required as afsd, subj't only to the leases hinfementd, & to any derivative leases or tenancies, & for the damage (if any) to be sustained by the vendors by reason of the severg of the sd lands & premes from the other lands & premes of the vendors, or in any other mner whatsr by reason of the exercise of the powers of the sd Acts in respt of the premes. As wits the hands of the sd pties.

Recitals.
That and is required.

Introductory recital.

Witness.

Appointment of arbitrator.

Schdle.

[*Pcels.*]

(c) See, as to the purchase of land by a School Board, the Elementary Education Act, 1870, ss. 19, 20 (which incorporates the Lands Clauses Consolidation Act); and see the Elementary Education Act, 1873, s. 15. As to the purchase of land by the managers of a public elementary school, see the Elementary Education Act, 1870, s. 21.

Purchase of land for school, &c.

XII.

**APPOINTMENT by the TRUSTEES and TENANT for LIFE of
settled estates of an ARBITRATOR to assess the compensa-
tion to be paid by a LOCAL AUTHORITY for making a sewer
under the PUBLIC HEALTH ACT, 1875 (a).**

BOROUGH of —, Works for sewage pposes.

Recitals.
Notice of
proposed
sewer.

WHAS under the provons of the Public Health Act, 1875, the Mayor, Aldermen, & Burgesses of the Borough of — in the cooy of —, being the Urban Sanitary Authority of the sd Borough, have served a notice dated, &c., upon us, the undersigned A. & B., the trees under the will, &c., of the estes settled by the sd will, of wch I the undersigned C., am the psnt tenant for life in posson, that the sd Authority in the exon of the powers & authorities given to & vested in them by virtue of the Public Health Act, 1875, will immedly after the — day of — next enter into & upon the lands & premes parlarly desc'd in the schdle & plan annexed to the sd notice, all of wch are situate within the Borough of — afsd, for the ppose of constructg, makg, & furnishg a sewer in, through, or under the sd lands & premes, & in the mner shown on the sd plan, wch sd sewer will form pt of the works comprd in the scheme for the sewerage of the sd Borough, or a pt thof, now being carried out by the sd Urban Authority, & also for the ppose of constructg man-holes, ventilatg shafts, valves, & sluices, & all other necy works for all or any of the pposes afsd, & that the course of the sd sewer was indicated by lines drawn on the sd plan, & thron coloured — : AND WHAS we, the sd trees of the sd settled estes, are entled, as such trees, to compenson in respt of the permanent damage or injury to the freehd of the sd settled estes, or the owner or owners for the time being thof, wch will arise or be sustained by reason of the makg & maintaing of the sd sewer & all works & things incidental thto through, under, or upon the sd respive lands &

Claim for
compensa-
tion.

(a) 38 & 39 Vict. c. 55. As to the powers of the Local Authority, see the Act, ss. 16, 18, 19, 21, 24, 26; as to the purchase of land, see ss. 175, 176; as to interference with water rights and mines, &c., see ss. 327, 332, 334, and the Amendment Act of 1883 (46 & 47 Vict. c. 37); as to the mode of settling compensation, see s. 308; and as to arbitration, ss. 179, 180.

premes, & the occupon & use of any portions of the surface of the sd lands & premes wch may be permanently taken for the ppose of the sd sewer or any of the pposes afsd, AND also in respt of any temporary damage or injury to the freehd of the sd settled estes, or the owner or owners for the time being thof, wch may arise or be sustained by or through the makg or constron of the sd sewer or the exon of the works & things incidental thto, the amt of such compenson in respt as well of such permanent as of such temporary damage or injury being payable to us, the sd trees (as I, the sd C., do hby admit): AND WHAS we are desirous of havg the amt of such compenson settled by arbitron under the provons of the Public Health Act, 1875: NOW WE, the sd trees, do accdly, in psuance of the provons of the sd Act, hby nominate & appt X., of, &c., to be an arbitror on our pt to settle & determine the amt of compenson to be pd to us the sd trees by the sd Authority in respt of such permanent & temporary damage or injury respily as afsd, the amt of such compenson in respt of such permanent damage or injury to be assessed & determined, if required by us the sd trees, septely from the amt of compenson for such temporary damage or injury as afsd, & the amt of compenson, whether for permanent or temporary damage or injury, payable in respt of any specified portion of the sd lands & premes to be also, if required by us, the sd tress, assessed & determined septely from the amt payable in respt of the remr of the sd lands & premes: AND I, the sd C., as tenant for life of the sd settled estes, do hby confirm the sd apptmt of the sd X., as arbitror for the pposes afsd: PROVD ALWAYS that this referce to arbitron & the compenson to be awarded in psuance thof shl not cover or extend to any damage or injury wch may arise to the sd settled estes, or the owner or owners for the time being thof, in respt of any entry wch may be made by the sd Authority upon any pt of the sd settled estes & premes, or any works wch may be exted by them for the ppose of makg any connectg drains or communicons from the sd sewer to any house or premes near or adjoining the same, or in respt of any such entry or works wch may be made or exted by the sd Authority, at any time after the origl constron or makg of the sd sewer or any such connectg drains or communicons as afsd, for the ppose of repairg, cleansg, alterg, clog up, discontinuing

Desire for arbitration.

Appointment of arbitrator.

Confirmation by tenant for life.

Reference not to extend to damage by branch drains.

Nor to
extend the
powers of
the Authority.

or removg the same resply or orwise in relon thto: PROVD ALSO that nothg hinfbe contd shl be construed as operatg as a licence or permission to the sd Authority to make any entry upon any of the sd lands & premes, or to exte or do any works or things wch they are not lawfully entled to make, exte or do under the powers conferred upon them by the Public Health Act, 1875. Dated, &c.

(Signed) A., B., & C.

XIII.

APPOINTMENT of UMPIRE by ARBITRATORS by *Endorsement on the Agreement of Reference or otherwise (a).*

WE, [the within named] A. & B., in psuance of the powers given to us by the within contd agrmt, *or* "by an agrmt of referce, dated, &c.," *or*, "by an order made by, &c., on the — day of —, in an action, &c.," do hby nominate & appt X., of, &c., to be the umpire accdg to the provons of the sd agrmt, *or*, "order," of referce, provd he will accept the office, & do within — days from the date hrof signify such acceptce in writg. As wits, &c.

XIV.

APPOINTMENT by TWO ARBITRATORS of a THIRD ARBITRATOR to act with them (b).

WE, &c., *as in last Precedent*, do hby nominate & appt X., of, &c., to be the third arbitror to act with us in the conson & determinon of the mres reld to us accdg to the provons of the sd agrmt, *or*, "order," of referce, provd he will accept the office, & do within — days from the date hrof signify such acceptce in writg. As wits, &c.

(a) See *Re Hopper*, L. R. 2 Q. B. 367; Arbitration Act, 1889, Sched. I. (b), *ante*, p. 150.

(b) As to the remedy where such an appointment is not made, see Arbitration Act, 1889, s. 5, *ante*, p. 151.

XV.

NOTICE *by* ARBITRATORS *to* UMPIRE *of final* DISAGREEMENT (c).

To Mr. —.

WE hby give you notice that we cannot & shl not be able to agree in makg an award concerng the mres refd to us by an agrmt, *or*, “order,” dated, &c., but have finally disagrd about the same, & that you are at liberty to proceed as umpire to consider & award upon the mres refd. Dated, &c.

XVI.

ENLARGEMENT *of* TIME *for making* AWARD *by*
ARBITRATOR *or* UMPIRE (d).

I, [the within named] A., in psuance, &c., *as in Precedent XIII.*, do hby enlarge the time for makg my award concerng the mres refd to me until the — day of —. As WITS, &c.

XVII.

ENLARGEMENT *of* TIME *by the Parties.*

WE, [the within named] A. & B., do hby give & allow to X., the arbitror, *or*, “umpire,” appted by the agrmt of referce within contd, *or*, “by an agrmt,” *or*, “order,” &c., *as in Precedent XIII.*, further time for makg his award, namely, until the — day of —: AND WE FURTHER DECLARE & agree that all the provons of the sd agrmt, *or*, “order,” of referce shl continue in full force & effect, & be construed & read in the same mner as if the day hby given & allowed for makg the award of the sd arbitror, *or*, “umpire,” had been given & allowed by the sd agrmt, *or*, “order.” As WITS, &c.

Time
enlarged.

Agreement
to hold
good.

(c) See Arbitration Act, 1889, Sched. I. (d), *ante*, p. 150.

(d) As to the power of the Court to enlarge the time, see Arbitration Act, 1889, s. 9, p. 152.

RECITALS IN AWARDS.

That disputes have arisen.

I. **WHAS** divers disputes & diffces have arisen betn, &c., concerng, &c., *or*, “under an agrmt, &c.”

Action and order of reference.

II. **WHAS** an action has been instituted by the sd A. agst the sd B., touchg the premes & the same is now pendg, & by an order made in the sd action on, &c., it was ordered, &c.

Appointment of arbitrator.

III. **WHAS** the sd A. by an instrumt in writg dated, &c., under his hand, appted [me the sd] B. to be the arbitror on his behalf in respt of the mres afsd.

Appointment of arbitrator by a company.

IV. **WHAS** the sd Co by an instrumt in writg dated, &c., under the hand of A. their secretary, appted [me the sd] B. to be the arbitror on their behalf in respt of the mres afsd.

Appointment of umpire.

V. **WHAS** the sd arbitrors [bfe enterg into the conson of the sd mres] by an instrumt in writg dated, &c., under their hands [endorsed on the sd agrmt] appted [me the sd] X. to be the umpire in the mre of the sd arbitron psuant to the sd agrmt [order].

Substituted appointment of umpire.

VI. **WHAS** the sd X. havg become unable to act as such umpire as afsd the sd arbitrors [bfe enterg into the conson of the sd mres] by an instrumt in writg dated, &c., under their hands, appted [me the sd] A. to be the umpire in the mre of the sd arbitron in the place of the sd X.

Enlargement of time for making award.

VII. **WHAS** we [the sd *arbitrors*] by an instrumt in writg under our [their] hands dated, &c., duly extended the time for makg our [their] award dated, &c.

Disagreement of arbitrators and failure to make award.

VIII. **WHAS** the sd *arbitrors* have finally disagrd & differed & have altogether failed to make their award in the sd mres, of all of which I have duly had notice, whby the sd mres so reld to the sd arbitrors as afsd have duly come bfe me as umpire for determinon.

Failure of arbitrators to make award within time limited.

IX. **WHAS** the sd *arbitrors* did not make any award of & concerng the premes within the time limd by the sd agrmt [order] of referce.

Agreement that no objection should be taken to award for informality.

X. **WHAS** doubts havg been entertained as to the effect of the declon required by law havg been made & subscribed by me [the sd B. on, &c., & by myself] on, &c., by reason of the same being prior to the date of the appmt of me [the sd B. & myself] as arbitror [& umpire resp] in the sd arbitron, the sd pties on, &c., mutually agrd in writg that no

objon shd be taken to the award by reason of such informality (if any).

CLAUSES IN AWARDS.

I. I AWARD & adjudge that the pltff has sustained damages by reason of the non-pformce by the deft of the agrmt in the statemt of claim mentd in the amt of £ —, or, "I ASSESS the damages sustained by the pltff in respt of the cause of action in the statemt of claim mentd at the sum of £——," wch sum I direct the deft to pay to the pltff on or bfe the — day of —.

Award of damages for non-performance of agreement.

II. I AWARD that the sd A. shl pay the sd B. on demand the sum of £—— in full satisfon of all claims & demands whatsr [relative to the mres refd to me, or, "in the above-mentd action"].

Award of sum in full of all demands.

III. I AWARD & order that the sd damages & the sd sevl sums of moy awarded & directed by me to be pd & the sevl mres & things awarded & directed by me to be done by or with regard to the respive pties to this referce as afsd, shl resply be pd, reced, done, accepted & taken, in full satisfon & dischge & as a final end & determinon of the sevl mres in diffe betn the sd pties wch have been refd to me, or, "of all mres in diffe betn the sd pties up to the time of the submission to arbitron."

Sums, &c., awarded to be in full of all demands.

IV. AND I further award & adjudge that the sd A. & B. shl each, on the requisition of the other of them [such other havg first pformed the award], & at the costs & chges of the pty requiring the same, exte & deliver unto the other of them a full & sufft rele of all [actions, causes of action, &] debts, damages, claims, & demands whatsr, from the beginng of the world, until the time of the sd submission to arbitron, or, "of all claims & demands in respt of the mres in diffe betn the sd pties wch have been refd to me as afsd," exceptg anything by the award provd to be done or suffered.

Award of mutual releases.

V. AND I further award, &c., that upon paymt of the sum awarded by me as afsd, the sd A. shl, if required, by & at the costs of the sd B., exte & deliver to him, the sd B., a full & sufft rele, &c., *as in the last clause.*

Award of release by one party.

Dismissal
of action
with costs.

VI. I AWARD, &c., that the pl^{tf} has no title to the relief sought by his above-mentd action in the — Divon of the High Ct of Justice, & that the sd action be dismissed with costs, to be taxed by the pper officer & pd by the pl^{tf} to the de^{ft}.

Proceed-
ings in
action to
be stayed.

VII. I AWARD, &c., that the sd action shl cease & be no further prosecuted, or, "that all pcdgs in the sd action shl cease, & that the same shl be no further prosecuted."

That plain-
tiff has no
cause of
action.

VIII. I AWARD, &c., that the pl^{tf} has been fully pd all demands wch he had agst the sd de^{ft}, & has no cause of action agst him.

Apology to
be made.

IX. I AWARD, &c., that the sd B. shl at his own expse make & publish in the — newspaper a pper apology, statg, &c.

Plaintiff
good cause
of action on
two claims,
none on
3rd.

X. I AWARD, &c., that the pl^{tf} has a good cause of action agst the de^{ft} on the first & second paragraphs of the prayer of his statemt of claim in the sd action for the sum of £——, wch sum I direct the de^{ft} to pay to the pl^{tf} on demand: AND I further award that the pl^{tf} has no cause of action agst the de^{ft} on the third paragraph of the prayer of the sd statemt of claim.

Of damages
generally.

XI. I AWARD & find that the pl^{tf} has sustained damages from the de^{ft} occasioned by the cause of action for wch the sd action was brought to the amt of £——, & I assess the pl^{tf}'s damages at the sd sum of £——, & direct the de^{ft} to pay the same to the pl^{tf} on demand.

Convey-
ance to be
executed.

XII. I AWARD, &c., that the sd B. shl, at the reqt & costs of the sd A., by a pper & effectual assurse, convey, *pcels*, with the appurts unto & to the use of the sd A. & his hrs, or as he or they may direct, such assurse to be prepared by the sd A.

Delivery up
of deeds.

XIII. I AWARD, &c., that the sd B. shl forthwith deliver to the sd A. or his hrs all deeds & writgs in the custody or power of the sd B. relatg to the sd freehd premes.

That one
party has
no claim
against the
other.

XIV. I AWARD, &c., that the sd A. has no claim or demand agst the sd B. in respt of any of the mres in diffce betn them.

As to other
matters in
difference.

XV. I AWARD, &c., that there are no mres in diffce betn the pties other than those in the sd action, or, "AND AS to the mres in diffce betn the sd pties other than those in the sd action, I award, &c., that the de^{ft} do pay to the pl^{tf} the sum of £—— in full satisfon & dischge of all claims & demands by the pl^{tf} agst the de^{ft} in respt of the same."

- XVI. I AWARD, &c., that the sd A. do pay to the sd B. the costs of the sd action, to be taxed by the pper officer. Payment of costs of action.
- XVII. I AWARD, &c., that judgmt be forthwith entd in the sd action for the pltff [deft], with the costs of the sd action, & of the referce & of this my award, to be taxed by the pper officer of the sd ct. Judgment to be entered for plaintiff, or defendant.
- XVIII. I AWARD, &c., that each pty bear his own costs of the action. Each party to pay his own costs of action.
- XIX. I AWARD, &c., that the costs of both pties of the sd action when taxed shl be added togr, & that one moiety thof shl be pd & borne by the pltff & the other moiety by the deft & that if eir pty shl have pd more than his just share, the excess shl be pd to him by the other pty. Costs of action to be borne equally.
- XX. I AWARD, &c., that exon may issue in the sd action for the sd damages & costs forthwith, *or*, "at any time not sooner than the — day of — next." Execution to issue for damages and costs.
- XXI. I AWARD, &c., that the sd A. do pay to the sd B. his costs of & incidental to the referce, & the costs of the award, & that the sd A. do bear his own costs of the same. All costs of reference and award to be paid by ono party (a).
- XXII. I AWARD, &c., that each of the sd pties shl bear his own costs of the referce, & pay one-half of the costs of the award: AND that if eir pty shl in the first instce pay more than such half, the excess shl be pd to him by the other pty. Each party to bear his own costs of reference and half costs of award.
- XXIII. I AWARD, &c., that one moiety of the costs of the referce & award shl be borne & pd by the sd A., & the other moiety by the sd B., & that if eir pty shl in the first instce, &c., *as in last clause*. Half costs of reference and award to be paid by each party.
- XXIV. I DIRECT the costs of the pltff of the sd referce & of this my award to be taxed as betn solor & client by A., of, &c., *or*, "one of the taxg-masters of the — Divon of the High Ct of Justice," *or*, "I ASSESS the amt of the costs of the pltff of the sd referce at £—, & of this my award at £—."

(a) As to awarding costs, see *Harland v. Mayor of Newcastle*, L. R. 5 Q. B. 47; Arbitration Act, 1889, Sched. I. (i), *ante*, p. 151.

Awarding costs.

PRECEDENTS OF AWARDS

I.

AWARD *by* ARBITRATORS *or* UMPIRE *under an Agree-
ment or order of* REFERENCE *settling a Balance of*
ACCOUNTS (a).

Recitals. TO ALL TO WHOM THESE PSNTS SHL COME, A.,
of, &c., & B., of, &c., send greetg; *Recite that disputes have
arisen: agrmt of referce: or, action & order of referce: [failure
of arbitrors to make award & apptmt of umpire] enlargemt of
time for makg award, or as the case may be; see above, RECITALS:*

Award. NOW WE, the sd, arbitrors, [I, the sd, umpire], havg taken
upon ourselves [myself] the burthen of the sd referce [um-
pirage], & havg heard, examined, & considered the allegons of
the sd pties, & the witses, documts, & evidece of both the sd
pties concerng the premes, do hby make & publish our award
[my award & umpirage] in writg of & concerng the premes in
mner follg, that is to say: WE [I] FIND & award that the balce
due from the sd N. to the sd M. upon the settlemt of the accts
betn them wch have been refd to us [me] as afsd is £——,
wch we [I] award & direct to be pd by the sd N. to the sd M.
on demand: AND, &c., *award as to dismissal or discontinuance
& costs of action (if any), & costs of referce & award, & mutual
reles; see above clauses.*

**Balance
due.**

Signed & published in }
the presce of }

II.

AWARD *by* ARBITRATORS *under* LANDS CLAUSES CON-
SOLIDATION ACTS. VARIOUS RECITALS. PROVISIONS
as to COMPENSATION *for* REMOVAL *of and* DAMAGE *to*
MACHINERY.

Recitals. TO ALL, &c., WE, A., of, &c., & B., of, &c., send greetg:
WHAS by 2 sevl instrumts in writg dated resply, &c., under

**Stamp on
award.**

(a) As to the stamp on an award, see the Stamp Act, 1891, Sched. I., tit.
AWARD.

the hand of D., secretary to the — Rly Co, addressed to E., of, &c., notice was in psuance of the, *special Act*, & the Acts incorpd thwith given by the sd Rly Co, to the sd E., that they the sd Co required to pchase & take for the pposes of the rlys & the works connected thwith authorised by the first-mentd Act, the lands & hds respily specified & desc'd in the respive schdles thto & coloured — on the respive plans accompanying the sd notices, the sd premes comprd in the first of the sd notices being desc'd in the schdle thto as, &c.; *the same as to ppty schdled to 2nd notice*: AND that the sd Co were willg to treat for the pchase of the sd respive lands & hds so required as afsd, & of the intt of the sd E. thrin, & as to the compenson to be made to him for the damage that might be sustained by him by reason of the exon of the rlys & works authorised by the first above-mentd Act: AND WHAS the sd E. by an instrumt in writg dated, &c., under his hand, gave notice to the sd Rly Co that he was entled to the sd lands & hds comprd in the sd first notice for an .este, &c.: *Description of E.'s intt in the premes comprd in the two notices: recite apptmt of arbitror by E., & by Rly Co: apptmt of umpire by arbitrors: extension of time for makg award: apptmt of substituted umpire: see above, RECITALS*: AND WHAS in the course of the pcdgs bfe us it was agrd that the sd E. shd retain for his own use & remove from the hds comprd in the sd first notice the engine, boiler, machy, & fixtures & fittgs in the nature of trade machy, wch were affixed to the pts of the same hds occupied by him, & that the sd Co shd pay to the sd E. the sum of £—— for the expses incurred by him in connon with such removal & for any damage to the sd engine, &c., wch might be occasioned through the removal thof: NOW THESE PSNTS WITS that we the sd A. & B. havg taken upon ourselves the chge of the sd referce & havg previously to enterg upon the mres refd to us as afsd made & subscribed the declons hrunto annexed (c), & nominated & appted in writg C., of, &c., to be the umpire to decide upon any of the sd mres on wch we shd differ, & havg duly heard, examined, & considered the allegons, witses, & evidce of both the sd pties concerng the

Notice to
treat.

Notice by
vender of
his interest
in the
lands.

Agreement
as to trade
fixtures (b)
and ma-
chinery.

Testatum.

(b) As to trade fixtures, see *Gibson v. Hammersmith & City Rail. Co.*, Dr. & S. 603.

(c) See 8 & 9 Vict. c. 18, s. 33.

Award.

premes, do togr at the same time & in the presce of each other (a) make this our award in writg of & concerng the premes in mner follg, that is to say: WE AWARD assess & determine that the follg sums are the amts to be pd by the sd Rly Co to the sd E. for & in respt of the pchase of & in compenson for the value of his intt in the respive lands & hds comprd in the sd respive notices to treat, & for all damage sustained by him by reason of the exon of the rlys & works authorised by the sd first above-mentd Act, that is to say, the sum of £—— (in wch is included the sd sum of £——, payable by the sd Rly Co under the agrmt lastly hinbfe recited), for the value of the intt of the sd E. in the lands & hds comprd in the first of the sd notices to treat dated, &c., & the sum of £—— for the value of his intt in the lands & hds comprd in the second of the sd notices to treat, &c. IN WITS, &c.

III.

AWARD *by UMPIRE in respect of PROPERTY injuriously affected but not taken by a RAILWAY COMPANY (b).*

Witness-
eth.
Finding.

TO ALL, &c., I, A., of, &c., send greetg. *Recitals, see above:* NOW THESE PSNTS WITS that I, the sd A., &c., *see Precedent I., p. 174,* that is to say: I do hby find that by reason of the obstron of the main public highway leadg in a ——— diwon from ——— Bridge, & known as ——— Street, *or as the case may be,* upon wch the sd premes of the sd B. abut by, &c., *describe specifically the works causg the prejudice,* access to & from the sd premes of the sd B., from & to, &c., is rendered less direct & convenient than formerly, & the lettg value of the sd premes of the sd B. diminished in consequence thof: AND upon the assumption that compenson is payable I award,

Award.

Arbitra-
tor's juris-
diction.
Lands in-
juriously
affected,
but not
taken.

(a) See *Stalworth v. Inns*, 13 M. & W. 466; *Eads v. Williams*, 24 L. J. Ch. 531.

(b) In such a case the arbitrator can only determine the amount, and not the question whether the claimant is entitled, which latter is one of law for the Court. As to the law with regard to lands injuriously affected but not taken by a railway company, see *Caledonian Railway Co. v. Walker's Trustees*, 7 App. Cas. 259.

assess, settle & determine that the sum of £—— is the amt to be pd in respt thof by the sd Rly Co to the sd B. as owner in fee simple of the sd premes : AND I further find that by reason of the obstron thof as afsd —— Street so far as it lies betn the sd rly &, &c., has ceased to be a main thoroughfare, & in consequence thof the lettg value of the sd premes of the sd B. has been diminished : AND upon the assumption that compenson is payable, I award, &c., that the sum of £—— is the amt to be pd by the sd Rly Co to the sd B. as owner in fee simple of the sd premes in respt of the diminon in the value thof lastly hinbfe mentd. IN WITS, &c.

Further finding.

Further award.

IV.

AWARD by UMPIRE on a BUILDING CONTRACT.

TO ALL, &c., I, A., of, &c., send greetg : WHAS by a contract in writg, dated, &c., & made betn B., of, &c., & C., of, &c., for the eron by the sd C. for the sd B. of a dwg-house at, &c., the sd C. was to exte the works descd in the specificon thto annexed, & in the plans & drawgs thrin refd to, & provon was made with respt to addons to & omissions from the sd intd works, & it was provd that any disputes with respt to what shd be deemed addonal or omitted work & the value thof shd be refd to the arbitron of the architect of the works, & anor architect to be nominated by the sd C. ; & in case of the sd arbitrors not agreeing, then to the decision of an umpire who shd be an architect, & chosen by the sd arbitrors befe enterg upon the conson of the mres in dispute : AND WHAS disputes have arisen betn the sd B. & C. as to what shd be deemed addonal & omitted work within the meang of the sd contract, & such disputes have been refd to the arbitron of D., of, &c. (the architect of the sd works), & E., of, &c. (an architect nominated by the sd C.), *Apptmt of umpire, disagrmt of arbitrors & failure to make award & other clauses, see above*, RECITALS : NOW, &c., see *Precedent I.*, p. 174, that is to say, I find & award that the work descd in the 1st column of the 1st schdle hto is addonal work within the meang of the sd

Recitals.

Building contract.

Provision as to arbitration.

Disputes have arisen and been referred.

Finding and award.

contract: AND I award & assess the value of the sd addonal work at the respive sums set opposite thto in the 2nd column of the sd 1st schdle: AND I further find & award that the work described in the 1st column of the 2nd schdle hto is omitted within the meang of the sd contract: AND I award & assess the value of the sd omitted work at the respive sums set opposite thto in the 2nd column of the sd 2nd schdle. In WITS, &c.

[*Schdles.*]

ATTORNEY, POWERS OF (a).

CLAUSES (b).

1. I, A., of, &c., do hereby appt B., of, &c., my atty [B., of &c., C., of, &c., & D., of, &c., jtly & every two & every one of them sevly my attys & atty] in my name or on my behalf, to, &c.

Appointment by one person of an attorney or attorneys.

(a) The Conv. Acts, 1881 and 1882, contain some useful provisions relative to powers of attorney.

Enactments in Conv. Acts, 1881 and 1882.

By the Act of 1881, s. 40, a married woman, whether an infant or not, is enabled to appoint an attorney to execute a deed or do any other act which she herself might execute or do. (As to the payment of income subject to a restraint on anticipation to an attorney, see *Kenrick v. Wood*, L. R. 9 Eq. 333; *Stewart v. Fletcher*, 38 Ch. D. 627.) She cannot appoint an attorney to acknowledge a deed, which is necessarily her personal act. At common law a married woman could not give a power of attorney except, perhaps, with the consent of her husband; see *Cooper's Case*, 2 Leon. 200; ——— v. *Hopkins*, Cro. Car. 165, and note, 2 Buls. 13, overruling some earlier cases; see also the remark of Erle, C.J., in *White v. Greenish*, 11 C. B. N. S. 230. And a power given by an unmarried woman was in general revoked by her marriage; but it would seem that by the effect of the above enactment, coupled with the Married Women's Property Act, 1882, removing the disabilities of married women as to property and contracts, marriage would not now operate as a revocation; the provisions of the Conv. Act, 1882, ss. 8 and 9 (referred to below) implying that marriage might still so operate, are not inconsistent with this, as that Act was passed before the M. W. P. Act.

Married women.

By the Act of 1881, s. 46, an attorney is authorised to execute any assurance or instrument in his own name instead of in the name of the principal; see as to the two modes of execution, *infra*, DEEDS.

Execution of deeds by attorney.

The same Act, s. 47, provides that no person shall be liable for making or doing any payment or act in pursuance of a power of attorney in good faith after the principal has, unknown to him, died or become lunatic or of unsound mind, or bankrupt, or revoked the power, an enactment which is much more comprehensive than, and in fact appears entirely to supersede

Protection against revocation.

(b) All these clauses are adapted to the case of a power of attorney expressed in the first person, which is the more usual form where there are no recitals.

The same
by several.
Variation
for a firm.

II. WE, A., B., & C., of, &c., [carryg on business in ptnp togr as —, under the style or firm of —] do & each & every of us doth hby appt D., of, &c., the atty [D., of, &c., E., of, &c., & F., of, &c., jtly & every two & every one of them sevly the attys & atty] of us & of each & every of us [& our sd firm of —] in the names or name & on behalf of us & each & every of us [& our sd firm], &c.

To receive
a sum of
money.

III. To rece from K., of, &c., the sum of £—, [being the price agrd to be pd by him to me for the pchase of, &c.,] and all intt due or to become due in respt thof, & to give an effectual rect & dischge for the same.

To receive
debts and
personal
estate
generally.

IV. To demand, sue for, enforce paymt of, & rece & give effectual rects & dischges for all moys, secs for moy, debts, legacies, goods, chattels, & psonal este, of or to wch I am now or may hrafter become possed or entled, or wch are or may become due, owing, payable, or transferable to me from any pson or psons or corporon.

To give
receipts.

V. To rece & give effectual rects & dischges for all & any moys wch shl come to the hands of the sd [attys or] atty by virtue

22 & 23 Vict. c. 35, s. 26, which is substantially re-enacted by the Trustee Act, 1893, s. 23. This would not, of course, unless the power had been made irrevocable under s. 8 or 9 of the Conv. Act, 1882 (see below), validate a deed executed by the attorney after the death of the principal or any other event by which the power would be revoked. It is therefore desirable on a sale (except in the case of an execution under an irrevocable power) to deposit or retain the purchase-money until it is known that the power has not been revoked by the death of the principal or otherwise before the date of execution of the conveyance.

Power
made irre-
vocable.

By the Conv. Act, 1882, s. 8, a power of attorney given *for value* may be made irrevocable in favour of a *purchaser* (which includes a mortgagee or lessee, or other person dealing for value) so as not to be revoked or affected by the death [marriage in case of a female, see above], lunacy, or bankruptcy of the donor of the power, or anything done by the donor without the concurrence of the donee; and by s. 9, a power of attorney, *whether given for value or not*, may be made irrevocable in like manner for a *fixed time* not exceeding one year, in favour of a *purchaser* (including a mortgagee, &c.). In both cases the power must be *expressed* to be irrevocable. It is not, however, clear how such a power is to operate or be acted on as against third parties.

Deposit in
Central
Office.

By the Act of 1881, s. 48, a power of attorney, its execution being properly verified, may be deposited in the Central Office of the Supreme Court; and office copies are made evidence; a specially useful enactment where the power relates to real estate.

Stamps

As to the stamp on a power of attorney, see the Stamp Act, 1891, Sched. I., tit., LETTER OR POWER OF ATTORNEY.

of the powers herein contd, wch rects, whether given in my name or in the [names or] name of the sd [attys or] atty, shl exonerate the pson or psons or corporon paying such moys from seeing to the applicon thof, or being responsible for the loss or misapplicon thof.

vi. To deposit any moys reced by the sd [attys or] atty under or by virtue of these psnts with any banker, broker, or other pson in my name or in the [names or] name of my sd [attys or] atty, AND to withdraw such moys or any other moys wch are now deposited on my behalf with any banker, broker, or other pson, & to employ or apply all or any such moys in or about my sd business or any of the pposes afd or orwise as may be thought fit, or from time to time to invest the same or any pt thof at discron in my name or in the [names or] name of the sd [attys or] atty or of any other pson or psons in trust for me in or upon, *specified investmts, or*, "any such stks, funds, shares, or secs as may be thought pper," & to rece & give good dischges for all divds, intt, & income arisg from any such investmts, & to vary, sell, assn, transfer, & dispose of the same or any pt thof.

To deposit,
employ, or
invest
moneys.

vii. IN my name, and on my behalf, from time to time to pchase, take on lease or orwise acquire & hold all such houses, offices, bldgs, lands, hds, chattels, & effects in — afd as shl be thought necy or expedient for or in relon to any of the pposes or objts afd.

To acquire
lands, &c.

viii. FROM time to time, if & when the sd [attys or] atty may think fit, to sell, exchange, surrender, give up, mtge, chge, pledge, demise, lease, or dispose of any houses, offices, bldgs, lands or hds of any tenure, or any chattels or effects [in — afd], belonging to or held by me [includg power to sell or make grants in fee of any hds wholly or partially in conson of a perpetual rent-chge, & subjct to any covts, exceptions, reservons, & restrons wch may be thought fit, & to provide for the apportionmt of or indemnity agst rents or rent-chges affectg the ppty sold], & to procure the enfranchisemt of any of the sd hds, wch may be of copyhd or customary tenure, & to grant enfranchisemts, of any copyhd tenemts held of any

To sell,
&c., real
and per-
sonal
estate (a).

(a) A more specific power would often be necessary or advisable. As to a power to sell a business, see *Hawksley v. Outram*, [1892] 3 Ch. 359.

manor belonging to me, & to transfer, rele, or orwise deal with any mtges, chges, or secs, whether upon real or psonal ppty [in — afsd], to wch I may be entled, & also to exte or enforce any powers of sale or other rts, powers, or remedies incident to any such mtges, chges, or secs as afsd, or orwise to realise & obtain the benefit thof in such mner as may be thought pper, & to assure or dispose of any estes wch may be vested in me as a tree or mtgee.

To raise
money on
mortgage
(a).

ix. To borrow from time to time such sums of moy & upon such terms as the sd [attys or] atty may think expedient for or in relon to any of the pposes or objts afsd, upon [my psonal secy or] the secy of any of my ppty, whether real or psonal, or orwise, & for such pposes to give, exte, & make such mtges, chges, pledges, or other secs, & with such powers & provons as may be thought pper.

To manage
property.

x. To manage or superintend the managemt of all the estes & hds of whatever tenure of or to wch I am or shl become seised, possed or entled, & to cut timber or underwood, & work quarries, mines, & minls (whether now open or in workg or not), upon any of the sd estes & hds, & to erect, pull down, & repair houses or other bldgs, fences, & erons, & to drain, make roads on, or orwise improve any of the premes, & to dedicate any roads when made to the public, & to insure houses & other ppty against loss or damage by fire.

To manage
trust es-
tates (b).

xi. AND also (so far as I can lawfully give or delegate such respive powers or authorities) to sell, lease, dispose of, deal with & manage any ppty real or psonal wch may be vested in me alone or jtly with any other pson or psons as a tree, exor, or admor, & to exte & sign any deeds or instrumts & genlly to do any acts wch I could lfully have exted, signed, & done in any such capacity.

To enter
into agree-
ments with

xii. To enter into agreemts for yrly, monthly, or weekly tenancies, to take effect in posson or within 3 calr months from

Power to
mortgage.

(a) See also the full powers of mortgaging and dealing with mortgages in Precedent IX., p. 194. A power to mortgage, especially if it is to extend to pledging the credit of the principal, should of course be specifically given, if intended: see *Coondoo v. Watson*, 9 App. Cas. 561; *Bryant v. La Banque du Peuple*, [1893] App. Cas. 170.

(b) As to the validity of such a delegation of a trust, see 3 Dav. Prec., p. 2, 947, referring to *Stuart v. Norton*, 14 Moo. P. C. C. 17.

the date thof, of all or any of my real or leasehd ppty situate in the parish of — & coy of —, or elsewhere, & to make allowces to & arrangemts with the tenants & occupiers for the time being of the sd ppty, & to accept surrenders of leases & tenancies, & to demand, sue for, collect & rece, & give effectual dischges for the rents & profits now due & henceforth to become due in respt of the same : AND to take & use all lful pcdgs & means, by distress or action or orwise, for recoverg & receivg the sd rents, & for enforcg the pformce of any covts or agrmts wch the respive lessees or tenants may be liable to pform, & for evictg & ejectg or recoverg damages from tenants & occupiers makg default in paymt of such rents or in pformce of such covts or agrmts, & for obtaing & retaing posson of all or any of the premes occupied by any lessees or tenants makg such default.

tenants,
and to
collect
rents, with
ancillary
powers.

xiii. To commence, prosecute, enforce, defend, answer, or oppose all actions & other legal pcdgs & demands touchg any of the mres afsd, or any other mres in which I am or may hrafter be interested or concerned, & also, if thought fit, to compromise, refer to arbitron, abandon, submit to judgmt, or become non-suited in any such action or pcdg as afsd.

To take
and defend
legal pro-
ceedings
(c).

xiv. To adjust, settle, compromise, or submit to arbitron any accts, debts, claims, demands, disputes & mres touchg any of the mres afsd, or any other mres wch are now subsistg or may hrafter arise betn me & any other pson or psons, or betn my sd [attys or] atty & any other pson or psons.

To settle
accounts,
compro-
mise, &c.

xv. To compound & accept pt in lieu of & in satisfon for the whole of, or compromise any debt or sum of moy now or hrafter owing or payable to me, or any other claim or demand wch I have or may have agst any pson or psons or to grt an extension of time for the paymt or satisfon thof, upon such terms as may be deemed pper, eir with or witht

To com-
pound with
and make
allowances
to debtors.

(c) That this would include bankruptcy proceedings, see *Ex parte Framp-ton*, 1 De G. F. & J. 263. That under the combined effect of a clause like the above and clause xxiii., *post*, an attorney can obtain letters of administration with the will annexed on behalf of an executor absent from the country, see *Re Barker*, [1891] P. 251.

Bank-
ruptcy pro-
ceedings.

takeg secy for the same, or orwise to act with respt thto as may be deemed expedient.

To concur
with joint
owners.

xvi. To concur in doing any of the acts & things hinbfe mentd in conjunction with any other pson or psons interested in the premes.

To vote at
meetings.

xvii. To vote at the meetgs of any Co or Cos, & orwise to act as my proxy or repve in respt of any shares now held, or wch may hrafter be acquired by me thrin, & for that ppose to sign & exte any proxies or other instrumts in my name & on my behalf.

To employ
agents.

xviii. To appt & employ any agents, overseers, receivers, or other psons at such remuneron by way of salary, commision, or orwise, as the sd [attys or] atty may think pper, & the same from time to time to dismiss & dischge, & any others to appt or employ in their stead.

To execute
a specified
deed (a).

xix. In my name & as my act & deed to sign, seal, & deliver a certain indre already prepared & engrossed, or intd shortly to be engrossed, bearg or intd to bear date on or about the — day of —, & made or intd to be made betn, pties, & being or intd to be, *insert short description of intd deed as*, “a convce of freehd & leasehd hds, situate at, &c., & known as, &c., to K., by way of mtge for securg the paymt of £—— & intt.

To execute
deeds, &c.,
generally.

xx. To exte, sign, enter into, acknowe, perfect, & do all such [contracts, convces, leases, mtges, transfers, assnmts, surrenders, reles, assurces], deeds, agrmts, instrumts, acts, & things as shl be requisite, or may be deemed pper for or in relon to all or any of the pposes or mres afsd.

To transfer
land or
other
property
abroad.

xxi. To sign, seal, exte, acknowe, & deliver in the sd, *foreign country or colony*, accdg to the laws for the time being in force there, such deed or deeds, instrumt or instrumts & notarial act or acts as may be deemed requisite or expedient

Confirma-
tion by
principal.

(a) It may sometimes be useful, *e.g.*, where a misrecital has been discovered in the power of attorney (as to the effect of which see *Hersey v. Fos*, Litt. Rep. 143), to obtain the principal's confirmation by endorsement of a deed previously executed by attorney, as follows — “I the within named A. being now in England, do hby ratify & confirm the exon of the within written indre by my atty B. for me & on my behalf. Dated, &c. In wits, &c.

for conveying & transferrg, or orwise effectually assurg to K., of, &c., or as he shl direct, *short description of ppty*, & also by the same or any other deed or deeds, notarial act or acts, instrumt or instrumts, to enter into such covts or agrmts as are usual accdg to the laws afsd for a vendor to enter into, or may orwise be reasbly required: AND also to do & exte such further acts & things as may be deemed expedient for recordg, registerg, or orwise completg & givg validity to such deed or deeds, notarial act or acts, or instrumt or instrumts accdg to the laws afsd.

XXII. IN my name & on my behalf to draw, accept, endorse, negotiate, retire, pay or satisfy any bills of exchange, promissory notes, cheques, drafts, orders for paymt or delivery of moy, secs, goods, or effects, bills of lading, or other negotiable or mercantile instrumts or secs, wch may be deemed necy or pper in relon to my business or affairs.

To draw
bills, &c.

XXIII. AND genlly to act as my [attys or] atty or [agents or] agent at — afsd, in relon to the premes & all other mres in wch I may be interested or concerned, & on my behalf to exte & do all instrumts, acts, and things as fully & effectually in all respts as I myself could do if psonally psnt.

To act
generally.

XXIV. FROM time to time to appt & remove at pleasure any substitute or substitutes as atty or agent, attys or agents under [them or] him in respt of all or any of the mres afsd upon such terms & at such salaries or remuneron as [they or] he shl think fit.

To appoint
substitutes.

XXV. PROVD always that this psnt power of atty shl not extend to revoke or make void or affect any former or other power or powers of atty by me at any time htofore given or delegated to any other pson or psons whomsr for any distinct or other ppose or pposes, but such other power or powers shl remain & be of the same force & effect as if these psnts had not been exted.

Proviso
keeping
alive
powers of
attorney
given to
other
persons
for other
purposes.

XXVI. AND in case of the death of the sd atty, or of his inability (whether permanent or temporary) or unwillingness through absence, illness, or orwise, to act as my atty in relon

Substitu-
tion of
another
attorney
in case of
death,
&c. (b).

(b) This clause is intended for a case in which only one attorney is appointed. In the case of a joint and several power to two or more, it would not, of course, usually be required.

to the mres afsd or any of them, then I hby appt, *substitute*, of, &c., to act as my atty in the stead of the sd atty, after his death or durg such inability or unwillingness, & in the latter case either permanently or from time to time durg the subsistce of any such inability or unwillingness (as the case may be), unless & until these psnts shl be revoked or orwise determined, in like mner as if the name of the sd, *substitute*, had been inserted in these psnts instead of the name of the sd atty.

Ratifica-
tion clause.

XXVII. AND I hby for myself, my hrs, exs, & ads, ratify & confirm, & agree to ratify & confirm whatsr my sd [attys or] atty [or any substitute or substitutes actg under [them or] him] shl do or purport to do by virtue of these psnts, *if the atty is to act in a distant country, add*, “includg in such confirmon, whatsr shl be done betn the time of my death or the revocon by any other means of this power of atty & the time of such death or revocon becomg known to my sd [attys or] atty or [their or] his substitute or substitutes.”

To register
power
abroad.

XXVIII. AND I hby authorise & empower the sd [attys or] atty to acknowe in my name, and as my act & deed, this power of atty, & to register & record the same in the pper office in the sd colony, & to procure to be done any & every other act & thing whatsr, wch may be in anywise requisite or pper for authenticatg & givg full effect to this power of atty, accdg to the laws & usages of the sd colony.

Power to
be irrevocable (a).

XXIX. AND I hby declare that this power of atty shl remain in force & be irrevocable for ——— calr months from the date hrof.

(a) See the Conv. Act, 1882, ss. 8, 9, above, p. 180, note.

PRECEDENTS.

I.

TO EXECUTE CONVEYANCE to PURCHASER, and receive
Purchase-money (b).

KNOW ALL MEN by these psnts, that I, A., of, &c.,
apptmt of atty, p. 179: to rece the pchase-moy, & give rects
for the same, p. 180: to exte the conrce, p. 184: ratificon,
p. 186: [Power to be irrevocable, p. 186]. IN WITS, &c. (c).

II.

TO SURRENDER COPYHOLDS to use of Purchaser or
Mortgagee (d).

KNOW ALL MEN, &c., *apptmt of B. as atty, p. 179, to* To sur-
appear at the next or any subsequent Ct to be holden for the render.
manor of —, in the coy of —, or bfe the lord or lords,
lady or ladies, or steward or deputy-steward of the sd manor,
out of Ct, & then & there to surrender into the hands of the sd
lord or lords, lady or ladies, eir psonally or by the hands &
acceptce of the sd steward or deputy-steward by the rod, accdg
to the custom of the sd manor, ALL THAT, *pcels*, with the appurts
thof, TO THE USE of K., of, &c., his hrs & assns, accdg to the

(b) It is commonly said that a power of attorney must be by deed; see 1 Deed when
Dav. Prec., p. 387, note, referring to Salk. 9 (query 96); but a deed is necessary.
certainly not necessary in all cases (*e.g.*, a mere authority to receive and
give a receipt for money), though it presumably is so if the transaction
involves the execution of a deed, or the signing of any other document in
the name of the principal.

(c) It is in some cases necessary (*e.g.*, to meet the requirements of the Attesta-
Bank of England, and many other public bodies), and in all cases desirable, tion.
that the execution of a power of attorney should be attested by two
witnesses.

(d) That a surrender by attorney is generally valid, see *Combe's case*, 9
Rep. 75A; but a purchaser is not bound to accept a surrender by attorney;
Mitchel v. Neale, 2 Ves. Sen. 679.

Subject to redemption. To execute further assurance. custom of the sd manor, [subj to a condon for makg void the sd surrender, if I, the sd A., my hrs, exs, ads, or assns shl, on the — day of —, pay to the sd K., his exs, ads, or assns, the sum of £— with intt thron in the meantime at the rate of £— p.c. p.a.]: AND to exte & do all such further assurces & things as shl be necy or pper for procurg the sd K., his hrs or assns, to be admitted tenant or tenants of the sd premes. *Ratificon*, p. 186. IN WITS, &c.

III.

TO obtain ADMITTANCE to COPYHOLDS (a).

To take admittance. Subject to equity of redemption. KNOW, &c., *apptmt of B., as atty*, p. 179, to appear, &c., *as in last precedent*, & to take admittce of & from the sd lord or lords, lady or ladies, steward or deputy-steward of the sd manor by the rod, accdg to the custom of the sd manor, to ALL THAT, *pcels*, TO THE USE of me, the sd A., my hrs & assns, [subj to such rt or equity of redmon as shl be subsistg thrin by virtue of a condonal surrender of the sd — hds & premes dated the — day of —]. *Ratificon*, p. 186. IN WITS, &c.

IV.

BY a FIRM of TRADERS to raise MONEY on MORTGAGE of a Plantation in the Colonies.

To borrow. Mortgage. KNOW ALL MEN, &c., that we, &c., *apptmt of attys*, p. 179, for & on behalf of us & our sd firm to borrow such sum or sums of moy, not exceedg in the whole the sum of —, & at such rate of intt not exceedg £— p.c. p.a., for such period & on such terms in other respts as our sd attys or atty may think fit, AND to secure the repaymt thof with intt by a mtge of, *short description of pcels*, & the crops, produce, live & dead stk, utensils, machy, plant, effects, & ppty now or at any time

(a) Admittance may be taken by attorney, see the Copyhold Act, 1894, s. 84 (2); and as to enfranchisement, see s. 48.

hrafters in upon or belonging to the sd planton & premes or any pt or pts thof respby, & for the pposes afd, *to give rects*, p. 180: AND FURTHER for the pposes afd, *to exte assurse of land, crops, &c.*, p. 184, to the pson or psons advancg such sum or sums of moy, or as he or they shl direct, by way of secy as afd, with such covts as may be usual accdg to the laws in force in ——— Enter into covenants.
 afd for mtgors to enter into, or may be reasbly required, includg covts for repaymt of the sum or sums of moy to be advced as afd & the intt for the same, & such powers of sale & other powers and provons in favour of the mtgee or mtgees as our sd attys or atty may deem necy or expedient, AND to exte Execute deeds.
 & do all such other instrumts, acts, & things as may be thought pper for effectuatg & perfectg any such mtge or secy as afd, or orwise in relon to the premes. *Ratificon*, p. 186. [*Power to be irrevocable*, p. 186, (b)]. [*To register power abroad*, p. 186.] IN WITS, &c. (c).

V.

TO LET and MANAGE House Property.

KNOW, &c., *apptmt of atty*, p. 179: *to enter into agrmts for yrly tenancies & to collect rents with ancillary powers*, p. 182:

(b) Where the power is to be exercised in New South Wales, say, “And I hby declare that this power of atty shl remain in force until notice of my death or of my having revoked the same shl have been reced by my sd [attys or] atty.” See 17 Vic. No. 22 of New South Wales. In Victoria any act done by an attorney is valid until the death of the constituent or the revocation of the power is registered; see Victoria Statutes, 54 Vic. 1103.

(c) It would usually be sufficient for the execution of a power to be used in the Colonies to be attested by two witnesses, one of whom should depose before a mayor having a corporate seal, or a notary public having general jurisdiction, to the execution thereof in the presence of himself and the other witness; but in the case of foreign countries, and also, it is believed, in some of the Colonies, special formalities may be desirable, if not necessary, for authenticating the power; as to which information may be obtained from the Colonial agents or a notary public, or in the case of a foreign country from the consulate. For a form of such a declaration, and the verification thereof, see DECLARATIONS. As to India, see 1 Dav. Prec. 403, note; as to the execution of powers in Germany, see 31 Sol. J. 248. Execution of powers for use abroad.

To settle
with
superior
landlord.

Insure.

AND ALSO for me & in my name, to settle all accts betn me & my superior landlords, 'or any of them, & to pay all such sums of moy as shl from time to time be due from me to them or any of them: AND to effect insces agst loss or damage by fire of all or any houses, bldgs, or insurable ppty on my sd este & premes, & to pay the premiums & moys payable for effectg & keepg up such insces: *to take & defend legal pcdgs*, p. 188: *to arrange & compromise*, p. 188: *ratificon*, p. 186. [*Power to be irrevocable*, p. 186.] IN WITS, &c.

VI.

BY LEGATEE ABROAD *to persons in ENGLAND to receive a*
LEGACY AND SHARE OF RESIDUE (a).

To obtain
payment.

Give
receipts.

Give
indemnity.

TO ALL TO WHOM these psnts shl come, A., of, &c., sends greetg. *Recite will of K., givg a legacy of £—— & share of residue to A., & apptg L. & M. exs; death & probate*: NOW THESE PSNTS WITS, &c., *apptmt of B. & C. attys*, p. 179, to demand, sue for, & recover of & from the sd L. & M., as such exs as afsd, or eir of them, or other the pson or psons by whom the same may be payable, the afsd legacy of £—— so bequed to the sd A. as afsd, & also the share of the residuary este of the sd K., to wch he, the sd A., is entled as afsd: AND to give effectual rects & dischges for the same resply, & to exte such reles as may be reasbly required in relon thto: AND ALSO in the name & on behalf of the sd A., if the sd attys or atty shl be required & think pper so to do, to exte any bond or covt for the repaymt of the sd legacy & share of residue, or eir of them, or of a due proportion thof resply, in case the este & effects of

Foreign
powers.

(a) Under a foreign power of attorney, even if in a foreign language and in foreign form, which is intended to be acted on in England, the extent of the authority, so far as transactions in England are concerned, must be determined by English law; *Chatenay v. Brazilian, &c., Co.*, [1891] 1 Q. B. 79. It is sometimes necessary, and generally (if the case admits) expedient, that a power which is to be used in a country where different laws prevail (and especially if the language is different), should be according to the forms in use in that country; as to the authentication of such a power, see note, last page.

the sd K. shl subseqtly to the paymt thof resply, prove insufft for paymt of the debts of the sd K. & the legacies bequed by his will : AND ALSO, if it shl seem expedient so to do, to take & prosecute any legal pcdgs for recoverg paymt of the sd legacy or share of residue, or for the admon of the este of the sd K., or orwise in relon to the premes : AND ALSO, if deemed necy, for & in the name of the sd A. to apply for & obtain lres of admon to the este & effects of the sd K., & to exte & do all such instrumts & acts as may be necy or pper in that behalf, or orwise in relon to the premes ; AND UPON obtaing such lres of admon, for & in the name of the sd A., to do & exte all such acts & things as shl be necy or requisite in or about the gettg in & administerg the este & effects of the sd K. *To arrange & compromise*, p. 183. *To act genlly*, p. 185. *To appt substitute*, p. 185. *Ratificon*, p. 186. [*Provo, keepg alive powers given for other pposes*, p. 185.] [*Power to be irrevocable*, p. 186.] IN WITS, &c. (b).

Take legal proceedings.

Take out letters of administration.

Administer.

VII.

TO take out ADMINISTRATION with WILL ANNEXED in INDIA (c).

TO ALL, &c., *Recite will of K., apptg A. & B. exs, & devisg mtge estes to them : Death & probate in England by A. & B. :*

NOW, &c., *apptmt by A. & B. of C., D., & E., attys or atty*, p. 179, to apply for & obtain from the pper Ct or Cts, office or offices in India, lres of admon with the sd will annexed, limd to the movable & immovable ppty of the sd testor there situate or recoverable, or orwise to procure themselves or himself to be constituted, eir as the attys or atty of the sd A. & B. or orwise, the ads or ad of the sd ppty, or the legal repves or

To take out letters of administration (d).

(b) For affidavit verifying execution and verification, see DECLARATIONS, STATUTORY.

(c) See the Indian Succession Act, 1865, s. 242, Act XIII., of 1875, Act II., of 1877, and Act VI., of 1881 ; and see further as to India, 1 Dav. Prec. 403, note.

(d) That the same purpose may be effected by a more general power to appear in any court, &c., see *Re Barker*, [1891] P. 251, *ante*, p. 183.

Execute
bond.

Receive
rents.

Execute
reconvey-
ances.

Pay debts.

repve of the sd testor in India : AND FOR this ppose, as the act & deed of the sd A. & B., to exte & deliver such bond, covt, recognizance, or other obligon as may be required upon the grant of such lres of admon or orwise, & *also to rece debts & psonal este*, "movable & immovable ppty wch now, or at any time hrafter, may belong to, or form pt of the este of the sd K.," p. 180 : AND ALSO to take & retain posson or rece the rents & profits of any ppty in India wch shl become vested in the sd A. & B., or the sd C., D., & E., or any or eir of them, by virtue of such devise & grant of lres of admon as afsd, or eir of them, & to exercise all such powers in relon to such ppty as may be vested in the sd A. & B. : AND UPON paymt of the moys secd to the este of the sd K., to exte such reconvces or reles of mtge estes as may be required, & to pay all debts due from the este of the sd testor to any pson resident in India : *gentl power to give rects*, p. 180 : *to arrange & compromise*, p. 183, *clause XIV., omittg the words after the word "arise"* : *to compound with & make allowces to debtors*, p. 183 : *to take & defend legal pcdgs*, p. 183 : *to exte deeds, &c., genlly*, p. 184 : *to appt substitutes*, p. 185 : *to act genlly*, "as the sd A. & B., as such exs & devisees as afsd, could do," p. 185 : *ratificon*, p. 186 : *to register the power in India*, p. 186. [Power to be irrevocable, p. 186.] IN WITS, &c. (a).

VIII.

TO COMPLETE a PURCHASE (b).

Recitals.

TO ALL, &c., A., of, &c., *pchaser*, sends greetg : WHAS the sd A. has lately contracted to pchase certn — & hds in the parish of —, & coy of —, known as the — este, but the sd pchase has not yet been completed : AND WHAS the sd A. is about to go abroad : NOW THESE PSNTS WITS, &c., that he, the sd A., *apptmt of B. as atty*, p. 179, to do or exte all or any of the acts & things hinafter mentd, that is to say :

(a) See note to Precedent IV., p. 189. The practice is to execute in the presence of a notary.

(b) Powers of attorney may often be conveniently paragraphed as in this and some of the subsequent forms.

1. To **MAKE** or take such requons or objons as to the title or evidece of title to the sd este & premes, or orwise in relon thto, as the sd atty shl think fit. To make requisitions.
2. To **INSIST** upon any such requon or objon, or to withdraw or abandon the same wholly or partially, & eir absolutely or upon the terms of receivg an indemnity or compenson or orwise, as the sd atty shl think fit. Insist on or withdraw requisitions.
3. In **CASE** any error, misstatemt, or omission in the parlars or description of the premes shl be discovered, to enter into such agrmt as to receivg or allowg compenson as the sd atty shl deem pper. Arrange for compensation.
4. In **THE** event of the sd atty takg or makg any objon or requon in respt of the title or orwise wch the vendor shl neglect or refuse to remove or comply with, or in the event of any default on the pt of the vendor in specifically performg the sd contract, then & in any such case, if the sd atty shl so think fit, eir to rescind the contract & to demand the return of & sue for & recover & give a rect for the deposit of £——, pd by him, the sd A., upon the exon of the sd contract, or to take legal pcdgs for determing the validity of any such requon or objon as afsd, or for recoverg damages in respt of such default as afsd, or for enforcg specific pformce of the contract or orwise in relon thto as circes may require or the sd atty may think fit. Rescind contract or take legal proceedings.
5. To **DEFEND** any legal pcdgs wch may be taken by the vendor to recover damages agst the sd A. for alleged non-pformce of the sd contract, or to determine the validity of any such objon or requon as afsd, or to enforce the specific pformce of the sd contract by the sd A., or orwise in relon to the premes. Defend legal proceedings.
6. To **SUBMIT** to arbitron, compromise, or abandon any such pcdgs wch may be taken by or agst the sd A. as afsd, or any question or dispute in relon to the premes. Arbitration.
7. To **ACCEPT** & take a pper assurce or assurces from the vendor & all other necy pties of the sd —— & hds, eir to the use of the sd A., his hrs & assns, or orwise: AND to accept, exte, or enter into & do, in the name or on behalf of the sd A., any assurces, deeds, covts, instrumts, & things wch may be deemed necy to or pper for completg the sd pchase, or in relon thto. Conveyance and completion.

8. *To appt substitutes*, p. 185. 9. *Substition of anor atty on death, &c., of B.*, p. 185. 10. *Ratificon*, p. 186. [*Power to be irrevocable*, p. 186.] IN WITS, &c.

IX.

GENERAL POWER of ATTORNEY to MANAGE PROPERTY and carry on BUSINESS in ENGLAND, with full powers of dealing with MORTGAGES (a).

KNOW ALL MEN, &c., *apptmt of B. as atty*, p. 179 : to manage ppty, p. 182 : to enter into agrmts with tenants, &c., p. 182 : to sell, &c., p. 181 : AND ALSO to mtge or chge all or any pt or pts of my ppty, whether real or psonal, for the ppose of raisg any sum or sums of moy, wch the sd atty may think fit, for dischgng or reducng all or any of the chges & incumbces thron, or any chges or incumbces wch may have been created under the psnt power, & wch shl for the time being be subsistg, or any pt or pts thof resply, or for the ppose of consolidatg any such chges or incumbces, or by way of secy for any such mtge debt or debts, eir in addon to or in substition, wholly or in pt, for any then subsistg secy or secs for the same, or for orwise effectuatg any of the pposes of these psnts ; AND to make any such mtge as afsd, with such powers & provons as he shl think pper : AND to concur in or consent to the transfer of any mtges, chges, or secs affectg all or any pt or pts of my ppty, whether real or psonal, to any pson or psons, whether as pt of an arrangemt for the consolidon of any such mtges, chges, or secs, or orwise : AND to consent to or allow any

Power to mortgage.

To concur in transfers of mortgages.

General

As to power of attorney by person going abroad.

(a) This precedent is adapted to the case of a person going abroad. Such a power, if not limited in duration to the principal's absence would not (at any rate as to persons without notice) be revoked by his return ; *secus* if *ex facie* so limited ; *Danby v. Coutts*, 29 Ch. D. 500. If desired, it can be made irrevocable under the Conv. Act, 1882, s. 9, for any fixed time not exceeding one year (see above, p. 180, note). so as to afford full protection to purchasers for value dealing under it ; but where there is real estate which may have to be dealt with by sale or mortgage, &c., it is sometimes better to have a trust deed instead of a power of attorney ; see form in Vol. II., MISCELLANEOUS. As to delegating trust business to an attorney, see above, p. 182, note (b).

alteron in the rate of intt upon any such mtges or chges, or the terms of repaymt or redmon, & to allow any arrears of intt upon such mtges or chges to be capitalized & carry intt, & to authorise the rele of any of the secs for any mtge debt or debts; AND to insert in any deed or instrumt for effectg any such transfer or consolidon or other arrangemt as afsd, such powers or provons by way of further secy to the transferee or transferees, or mtgee or mtgees, or orwise as may be deemed pper, & genlly to enter into or concur in such arrangemts in relon to the incumbces for the time being affectg my ppty, whether real or psonal, or orwise to deal with such incumbces, in such mner & with the like powers, authorities, & discrons in all respts as the sd atty might have done if he were absolutely entled to the sd premes: *to arrange & compromise*, p. 183: *to compound with & make allowces to debtors*, p. 183: *to take & defend legal pcdgs*, p. 183: *to concur with co-owners*, p. 184: *to give rects*, p. 180: *to deposit & invest moys*, p. 181: *to rote at meetgs*, p. 184: AND ALSO to carry on, manage, & conduct my trade or business of — at — or elsewhere for such time & in such mner as my sd atty shl in his sole discron consider advisable: AND with full power to my sd atty for the ppose of enablg him to carry on, manage, & conduct the sd business as afsd, to use & occupy the house & office in wch the same is now or shl for the time being be carried on (the rent, if any, & taxes payable in respt whof, shl be chged to the acct of the sd business): AND for the like ppose to use & dispose of all the capl, credits, stk, & effects wch now are or shl hrafter be employed in, or due or owg in respt of my sd business: AND ALSO with power for my sd atty to continue to employ such clerks, agents, servants, & other psons as now are employed in or about the sd business, & to hire & employ such other psons for the same or the like pposes or duties, & at such salaries as he shl think pper, & from time to time to dismiss any of such clerks, agents, servants, & other psons as he shl think fit, & to increase & diminish the no. of psons employed in the sd business: *to draw bills, &c.*, p. 185: AND ALSO with full power for my sd atty to enter into such contracts respectg the sd business as he shl think expedient: AND to adjust & settle all accts & transons, & compromise or compound any debts or claims wch may be owg by or to me or

powers of
dealing
with mort-
gages.

To carry on
business.

To use
offices.

To dispose
of capital
and effects.

To employ
and dismiss
clerks, &c.

To enter
into con-
tracts.

To settle
accounts,
&c.

be claimed or made agst or on behalf of me in relon to the sd business: AND with power also for my sd atty from time to time to augmt or diminish the capl employed in the sd business as the exigencies thof may appear to require: AND ALSO with full power, if deemed expedient, at any time to discontinue, wind up, or dispose of the sd business in such mner as he shl think pper: AND genlly to transact & do all mres & things respectg the sd business in the same mner in all respts as I myself could do: [AND ALSO to apply such pt of my net annl income as may from time to time be considered necy or pper for the expses of the establishmt at my residece at —, & the maintce of my family & the members of my househd, or orwise to incur such expenditure in that behalf as may be deemed pper, & so that as to the extent & scope of such expenditure my sd atty shl have the fullest discron & freedom from responsibility, & his authority in this behalf shl not be revoked or in any mner affected by the happeng of any event other than my death or the express revocon by me of this power by writg notified to him (a)]: *to exte deeds*, p. 184: *power to act genlly*, p. 185: *to employ agents*, p. 184: *to appt substitutes*, p. 185: *substiton of anor atty on death, &c., of B.*, p. 185: *ratificon*, p. 186. [Power to be irrevocable, p. 186.] IN WITS, &c. (b).

Lunacy of principal.

(a) The clause in brackets is intended to meet the case where the head of a family may probably become temporarily incapacitated from attending to business. As to dealings under a power of attorney in case of the lunacy or incapacity of the principal, see *Drew v. Nunn*, 4 Q. B. D. 661, 23 S. J. 794, 815; and the Conv. Act, 1881, s. 47; above, p. 179, note. The power may be made irrevocable for a year under the Conv. Act, 1882, s. 9; but this would only afford protection to dealings with purchasers for value; see p. 180, note.

Power to act in Colonies.

(b) A precedent for the management of property in the Colonies can readily be adapted from this; the variations will depend upon the usual course of business in the Colony; the power to register, p. 186, should be added. As to the mode of authenticating powers to be acted upon in the Colonies, see p. 189, note.

X.**GENERAL POWER of Attorney by a PERSON going ABROAD
for a short time. Very short FORM.**

KNOW ALL MEN, &c., *Apptmt of Atty*, p. 179.

1. To ENDORSE or sign my name to any cheques divid or
intt warrants, or other instrumts payable to me. To endorse
cheques.

2. To DEMAND, sue for, & rece or prove in any bkptcy,
liquidon, composon, windg up or admon for any moy,
chattels, or other ppty now or hrafter belonging or comg to
me. To receive
money or
other pro-
perty, &c.

3. To LET & manage all freehd, copyhd & leasehd ppty now
or hrafter belonging to me or pchased by my atty, & rece &
enforce paymt of the rents thof. To let and
manage
estates.

4. To SETTLE, compound, submit to arbitron or compromise
any accts, disputes, claims, actions or pedgs in wch I may be
concerned, & pay any moy due, or wch my atty may consider
due, from me. To settle
accounts,
&c., and
pay debts.

5. To EMPLOY agents for any of the pposes afsd. To employ
agents.

6. To INVEST any moys reced under this power in the pchase
or on the secy of freehd, copyhd or leasehd ppty, or in stks,
shares, bonds, or debes of Cos, municipal corporons, or public
bodies, & to sell or vary such investmnts. To invest.

7. To GIVE rects, reles, & indemnities for or relatg to any
moy or other ppty pd, delivered or tranferred to my atty. In
wits, &c. To give
receipts,
&c.

XI.**GENERAL POWER of Attorney to MANAGER of BANK
in COLONY.**

TO ALL, &c., the Bank of — sends greetg: WHAS the sd
Bank has appted A., of, &c., colonial manager of the sd Bank
in the colony or province of —, & is desirous of investg the
sd A. with the powers & authorities hinafter mentd: NOW
THESE PSNTS, &c., *apptmt of A. as atty of the Bank*,
p. 179, in the sd colony of — for & in the name & on
Recital.
Appoint-
ment of
attorney.

behalf of the sd Bank, to have & exte all & singr the powers & authorities hinafter mentd (that is to say),

To superin-
tend busi-
ness.

1. To DIRECT & superintend the business & affairs of the sd Bank in the sd colony, & all branches & agencies of the sd Bank wch are or shl hrafter be opened or established in the sd colony.

Inspect
branches.

2. To VISIT all branches & agencies of the sd Bank, & to inspect & examine, & if the sd atty shl think pper, to take temporary or permanent posson, as the case may be, of the cash & secs for the time being at any such branch or agency as afsd, & all the books, accts, deeds, papers, & vouchers relatg to the transons thof, & genlly to inform himself of all mres & things in any way connected with the operons & dealgs of such branches & agencies as afsd : AND the sd Bank doth hby direct & require the respive managers, accountants, clerks, & all other officers of or attached to such branches & agencies as afsd, to communicate to the sd atty all such informon as he may think pper to require, & to lay open to him all the accts, vouchers, deeds, lres, & papers whatsr, in their posson or power, relatg to any of the dealgs of such branches & agencies resply, & to deliver to the sd atty upon his demand all such books, accts, vouchers, deeds, lres & papers as afsd, & also all cash, bills, notes, & secs in their or his custody or power, belonging to the sd Bank.

Give orders
as to
branches.

3. To GIVE such orders & dirons in regard to the conduct or managemt of such branches & agencies as afsd, as to the sd atty shl seem expedient.

Suspend
servants.

4. To SUPERSEDE or suspend any such manager, accountant, clerk, or officer as afsd, for such cause or reason as the sd atty may in his sole discron think sufft, with or witht assng any cause or reason, & eir absolutely or for such time as he may think pper.

Revoke
powers of
servants.

5. To REVOKE or make void, suspend or vary all & every or any the powers & authorities wch have bden or may hrafter be given to or vested in any of the managers or other officers of such branches & agencies as afsd, by or on behalf of the sd Bank.

Appoint
new
servants.

6. To APPT any new manager or managers, accountant or accountants, clerk or clerks, or other officer or officers, as the sd atty may think necy or pper, eir in the place or stead of

any manager, 'accountant, or officer who may have been superseded or suspended as aforesaid, or in addition to the then existing staff or otherwise, & at such rate of remuneration & upon such terms as the said attorney may think reasonable: **PROVIDE ALWAYS** Subject to confirmation. that any & every such appointment shall be subject to approval & confirmation by the Board of Directors of the said Bank in London, & every person or persons to be so appointed shall hold office subject in all respects to such approval & confirmation.

7. To give to & vest in any manager, accountant, or other officer of any such branch or agency as aforesaid, whether newly appointed or not, such powers & authorities as the said attorney may deem necessary or expedient. Give powers.

8. *To receive debts & personal estate*, p. 180, omitting the word "legacies."

9. *To arrange & compromise disputes, &c.*, "between the said Bank & any person or persons in the said colony," p. 183.

10. *To compound & make allowances to debtors*, p. 183.

11. *To take & defend legal proceedings*, p. 183.

12. To act on behalf of the said Bank in all matters incident to or arising out of the bankruptcy or insolvency, or any composition or arrangement with the creditors of any person or persons indebted or under liability to the said Bank or claimed so to be, or in the winding up of any Company so indebted or under liability or claimed so to be. Deal with debtors.

13. *To acquire land*, p. 181, "for the purpose of managing, conducting, & carrying on the affairs, concerns, & business of the said Bank."

14. *To raise money on mortgage*, p. 182.

15. *To execute deeds, &c.*, p. 184.

16. To act generally in the conduct & management of the business affairs & property of the said Bank in the said colony in such manner as the said attorney may in his discretion think expedient & for the advantage of the said Bank. Act generally.

17. For any of the purposes aforesaid to use the common seal provided to be used on behalf of the said Bank in the said colony. Use seal.

18. *To appoint substitutes*, p. 185.

19. *Ratification*, p. 186.

20. *Power to register*, p. 186.

AND THESE PRESENTS FURTHER WITNESSES, that the said Bank doth hereby nominate & appoint B., of, &c., & C., of, &c., Appoint-ment of substitutes.

jtly, or in case of the death, absce, illness, or incapacity of eir of them, then the other of them solely, to be attys & agents atty & agent of the sd Bank for & on behalf of the sd Bank to exercise & exte all & any of the powers & authorities hinbfe conferred upon or vested in the sd A., in as full & effectual a mner to all intents & pposes as if the names of the sd B. & C. had been resply hinbfe inserted in lieu of the name of the sd A., but nevs in the sevl events only & durg the periods hinafter mentd, that is to say, in case the sd A. shl depart this life, or from any cause cease to be the colonial manager of the sd Bank, then durg the period that shl elapse betn his dece or ceasg to be such manager, & the arrival in the sd colony of his duly appted successor, or in case he shl at any time be absent from the sd colony, or shl be prevented by illness or other incapacity from actg, & shl not have appted a substitute or substitutes to act for him under the afsd power in that behalf, then durg the period of such absce, illness, or incapacity. IN WITS, &c. (a).

XII.

POWER of ATTORNEY to manage MERCHANTS' BUSINESS in a Colony.

TO ALL, &c., A., of, &c., & B., of, &c., tradg in ptnp as — at — under the firm of A. B. & Co., send greetg:
Recitals: Apptmt of atty, p. 180, mutatis mutandis.

To transact
business.

To buy and
sell.

To conduct
correspon-
dence.

To transact, manage, carry on, & do all & every business, mres & things requisite & necy, or in any mner connected with or havg referce to our sd business in — afsd: AND for such ppose to make & effect all such sales, pchases, dealgs, & transons as the sd atty may deem necy or expedient, of or in goods, wares, merchandise, cargoes, or other ppty whatsr: *to draw bills, &c., p. 185*: AND also to conduct all correspondce or mres of business, by openg & ansverg all

(a) As to the authentication of powers of attorney to be used in the Colonies, see p. 189, note.

lres addressed to our sd firm in — afsd : AND to supervise, direct, & manage all affairs & ppty in — afsd belonging to us, or in wch we are or may become interested ; & to do & transact, or join with any other pson or psons in doing or transactg, all such acts & things as the sd atty shl deem expedient for the benefit or proton of the intts of our sd firm as fully & effectually as we could have done if psonally psnt : *powers to rece debts & personal este*, p. 180 : *to settle accts, &c.*, p. 183 : *to accept composons, &c.*, p. 183 : *to take & defend pcdgs*, p. 183 : *to excte deeds, &c.*, p. 184 : *to act genlly*, p. 185 : *to appt substitutes*, p. 185 : *ratificon clause*, p. 186 : *substitution of anor atty*, p. 185 : *power to register*, p. 186 : IN WITS, &c. (b).

To manage
affairs
generally.

XIII.

TO accept COMPOSITION for DEBT and receive DIVIDENDS, &c.

KNOW ALL MEN, &c., that I., A., carrying on the business of —, at —, under the firm of A. B. & Co., do hby appt C., of, &c., my atty, for & in the name & on behalf of me & my sd firm (of wch I am the sole member), to accept, assent, or agree to, or enter into any composon, arrangemt, liquidon, or agrmt, wch has been or may be proposed, made, or entd into by Messrs. D. & Co., of, &c., or any ptner, in their sd firm, to, with, or for the benefit of their or his credors, in respt of a debt or sum of £——, wch is now due to me or my sd firm from the sd Messrs. D. & Co., on balce of acct for goods supplied, or any other debt or sum wch is now or may for the time being be so due, or any intt due or to accrue due upon the same or any pt thof, or any claim or demand wch I or my sd firm may have agst the sd Messrs. D. & Co., or any ptner in their sd firm : AND ALSO to attend psonally or orwise & vote at meetgs of the credors of the sd Messrs. D. & Co., or any ptner in such firm, & if need be to appt himself the sd, atty, or any substitute to be my proxy for that ppose, & to prove for, demand, rece, & recover all divds, composons, & sums of

Appoint-
ment of
attorney.

To accept
composi-
tion.

Vote at
meetings.

(b) As to the mode of execution, see p. 189, note.

Settle
accounts.Give
receipts.

moy whatsr wch are or may be or become due or payable to me or my firm under or in psuance of any such composon, arrangemt, liquidon, or agrmt as afsd, or under any bkptcy or orwise howsr, in respt of the sd debt or sum of £——, or any such other debt or sum, claim or demand as afsd, or in respt of any intt due or to accrue due upon the same, or any pt thof: AND to settle & adjust all accts & questions dependg or arisg betn me or my sd firm & the sd Messrs. D. & Co., or any ptner in their firm, or the trees or tree actg under any such composon, liquidon, or arrangemt as afsd, or in bkptcy, or any other pson or psons in relon to the sd debt, or any of the mres afsd: AND UPON rect or recovery of any such divds or moys as afsd, to sign & exte effectual rects, reles, or dischges for the same: AND ALSO, if it shd appear necy or expedient, *to take & defend legal pcdgs*, p. 183: *to arrange & compromise*, p. 183; *to exte deeds, &c.*, p. 184: *to act genlly*, p. 185; *to appt substitutes*, p. 185: *ratificon*, p. 186: [*Power to be irrevocable*, p. 186] IN WITS, &c.

XIV.

DEED *giving* FURTHER POWERS *to an* ATTORNEY.

Recital.

Power of
attorney.Desire to
extend
powers.Extension
of powers.Old powers
preserved.

TO ALL, &c., A., of, &c., sends greetg: WHAS by deed poll or power of atty, dated, &c., under the hand & seal of the sd A., he, the sd A., has appted X., of, &c., & in the event of his death or the other events thrin mentd Y., of, &c., to be the atty of the sd A. with the powers thrin mentd: AND WHAS the sd A. is desirous of givg to the sd X., & in the events afsd to the sd Y., the further or addonal powers & authorities hinafter contd: NOW THESE PSNTS WITS that the sd A. doth hby give to & vest in the sd X., & in the event of his death or any of the other events mentd in the sd recited deed poll of, &c., the sd Y., the follg further or addonal powers & authorities, that is to say, in the name & on behalf of the sd A., *here insert the addonal powers: ratificon*, p. 186: PROVd ALWAYS that nothing hrin contd shl in anywise prejudice or affect the powers or authorities given or conferred by the sd

recited deed poll of, &c., and this psnt power of atty shl take effect & be in force concurrently with & solely by way of enlargemt & extension of the sd recited power of atty. [*Power to be irrevocable*, p. 186.] IN WITS, &c.

XV.

DEED *revoking Power of Attorney and appointing New* ATTORNEY.

TO ALL, &c., A., of, &c., sends greetg: WHAS by a deed Recitals.
poll or power of atty, dated, &c., under the hand & seal of Power of
the sd A., the said A. has appted B., of, &c., to be his atty attorney.
with the powers & authorities in the sd deed poll mentd:
AND WHAS the sd A. is desirous of revokg the powers given Desire.
to the sd B. as afsd, & of apptg C., of, &c., to be his atty
in place of the sd B.: NOW THESE PSNTS WITS that Revocation.
the sd A. doth hby revoke & make void all & singr the
powers & authorities by the sd hinbfe recited deed poll
given or conferred to or upon the sd B.: PROVD ALWAYS Not to
that the revocon hinbfe contd shl not prejudice or affect affect acts
anything lawfully done or caused to be done by the sd previous to
B., or any substitute or substitutes actg under him, in revocation
the exercise or intd exercise of any of such powers or becoming
authorities as afsd in the interval betn such revocon & the time known.
of the same becomg known to him or to his substitute or sub-
stitutes: AND THE sd A. doth hby ratify & confirm everything Ratifica-
lfully done or caused to be done by the sd B. or any substitute tion.
or substitutes actg under him in the exercise or intd exercise of
any of such powers or authorities, includg anything so done or
caused to be done in such interval as afsd: AND THESE Appoint-
PSNTS FURTHER WITS, *apptmt of C. as atty*, p. 179, to ment of
exercise & exte all or any of the powers & authorities by the new
sd deed poll given or conferred by the sd A. to or upon the sd attorney.
B. in as full & ample a mner to all intents & pposes as if the
name of the sd C. had been inserted in the sd deed poll in the
place of the sd B. *Ratificon*, p. 186. [*Power to be irrevocable*,
p. 186.] IN WITS, &c.

BONDS (a).

FORMAL PARTS.

From one obligor to one obligee without recitals.

I. KNOW ALL MEN by these psnts that I, *obligor*, of, &c., am bound to, *obligee*, of, &c., in the sum of £——, *usually twice the amt of ppal moy to be secd*, to be pd to the sd, *obligee*, his exs, ads, or assns, or to his or their atty or attys, for wch paymt I bind myself (b) by these psnts. Sealed with my seal. Dated this —— day of ——.

As to the use of bonds.

(a) See also INDEMNITY. Though bonds are usually employed for some purposes in preference to deeds of covenant, especially where the stipulations to be performed are in the alternative, a deed of covenant is in most cases equally advantageous, and frequently (as where the obligation has to be qualified by provisoes, &c.) more convenient; and where there are mutually dependent stipulations to be performed by each party, the form of a deed of covenant is essential. In the case of an agreement for payment of an annuity, or of a sum of money by instalments (unless the whole amount is to become immediately payable on default in payment of an instalment), a bond may be preferable, inasmuch as upon the obligor making default, judgment will be entered up for the penalty and stand as a security for the future payments for which execution (by the process of *scire facias*) may be issued as they fall due without the necessity of bringing a fresh action for each payment; but even in this case a deed of covenant might be made to have the same operation as a bond by inserting a penal clause. See Bullen and Leake's *Precedents of Pleadings*, 4th ed., p. 113; 1st ed., pp. 68, 69. Any of the forms of bond could, without difficulty, be converted into deeds of covenant if desired.

Stamp.

As to the stamp, see the Stamp Act, 1891, ss. 42, 60, and 86, and 1st sched., tit. BOND AND MORTGAGE.

Omission of the words "heirs, &c."

(b) The usual words binding the "heirs, &c.," of the *obligor* are here omitted; see the Conv. Act, 1881, s. 59, and above, p. 2, note; but it is thought better in most cases to retain those words in the condition of the bond. The practice of specially mentioning the representatives and assigns of the *obligee* is also for the most part adhered to; but the words might usually be omitted, if the draftsman should so prefer, except in the (not very common) case of a bond relating to land, in which it would be better to retain them, as the 58th section of the above Act (referred to

THE CONDON of the above written bond is such that if, &c., then the above written bond shl be void, or orwise shl remain in full force.

Signed, sealed, & delivered }
in the presce of }

II. KNOW ALL MEN by these psnts that we, *obligors*, are bound to, *obligees*, in the sum of £——, *usually twice the amt of ppal moy to be secd*, to be pd to the sd, *obligees*, their exs, ads, or assns, or to their atty or attys, for wch paymt, *if two obligors*, “we bind ourselves & each of us,” *if three or more obligors*, “we bind ourselves & every [four, three] two & one of us,” *as the case may be*, jtly & sevly (c), by these psnts. Sealed with our respive seals. Dated this —— day of ——.

From several obligors to several obligees, with recitals.

WHAS, &c. NOW THE CONDON, &c., *as in last form*.

Signed, sealed & delivered }
by the above-named —— }
in the presce of }

PRECEDENTS.

I.

BOND *from ONE OBLIGOR to ONE OBLIGEE for PAYMENT of a SUM of Money and Interest. VARIATIONS for SEVERAL OBLIGORS or OBLIGEEES.*

Bond from A. [B. & C.] to D. [E. & F.] see pp. 204, 205.

THE CONDON of the above-written bond is such that if the above bounden A., his [A., B., & C., or any of them, their or any of their] hrs, exs, or ads, shl on the —— day of ——, pay

Condition.

p. 3, note) mentions covenants only, and not bonds, differing in this respect from sections 59 and 60. A middle course, which would save the repetition of the words in question throughout the instrument, and which may often be adopted in bonds as well as other instruments, would be to provide that the names of the parties or the designations by which they are described shall, where the context so admits, be deemed to include their “hrs, exs, ads, & assns” respectively, as the case may be.

(c) It would be sufficient to say, “we bind ourselves jtly & sevly” whatever be the number; see B. S. C., Order XVI., rr. 4 and 6.

to the above-named D., his hrs, exs, ads, or assns, [D., E., & F., their exs, ads, or assns, jtly (a)] the sum of £—— with intt for the same from the date of the above-written bond, at the rate of — p.c. p.a., witht any dedon, THEN, &c.

II.

BOND for PAYMENT of money by INSTALMENTS with INTEREST on each instalment. VARIATION, where INTEREST is to be paid HALF-YEARLY on the whole PRINCIPAL SUM for the time being due, and where in case of DEFAULT in payment of any INSTALMENT or INTEREST, the WHOLE PRINCIPAL SUM is to become immediately due (b).

Bond from A. to B., in a sufft penalty, see p. 204.

Condition.

THE CONDON of the above-written bond is such, that if the above bounden A., his hrs, exs, or ads, shl pay to the above-named B., his exs, ads, or assns, the sum of £—— with intt for the same from the date of the above-written bond, at the rate of — p.c. p.a., by the instalmts, at the times & in mner follg (that is to say), the sum of £——, pt thof, with intt upon such instalmt from the date & at the rate afsd, on the —— day of ——, the sum of £——, further pt thof, with intt upon such instalmt from the date & at the rate afsd, on the —— day of ——, & the sum of £——, the residue thof, with intt upon such residue from the date & at the rate afsd, on the —— day of —— [or, the sum of £—— by five eql yrly paymts on the —— day of —— in every yr, the first of such

For pay-
ment of
instalments
with
interest
thereon.

By instal-
ments with
interest on
balance.

As to bonds
to joint
obligees.

(a) Under the Conv. Act, 1881, s. 60, the benefit of a bond in this form would survive on the death of any of the obligees; and by s. 61 the receipt of the survivors, &c., would be a good discharge on payment, notwithstanding the severance of the joint account. As to the presumption that joint obligees are in equity tenants in common of the debt, see *Steeds v. Steeds*, 22 Q. B. D. 537; but the presumption is of course capable of being rebutted, e.g., in the case of a loan of trust money (*ib.* 542). As to the right to receive interest on a bond beyond the amount of the penalty, see *Hatton v. Harris*, [1892] A. C. 547.

(b) See p. 204, note. Where in case of default the whole of the money is to become immediately payable, a deed of covenant will be more convenient than a bond.

paymts to be made on the — day of — next, & shl also in the meantime & until the whole of the sd sum of £—— shl be pd off in mner afsd, pay to the sd B., his exs, ads, or assns, intt for the same sum of £——, or for so much thof as shl for the time being remain due & unpd, at the rate of — p.c. p.a., to be computed from the date of the above-written bond, by half-yrly paymts, on the — day of — & the — day of — in every yr, the first of such paymts of intt to be made on the — day of — next], THEN the above-written bond shl be void, orwise the same shl remain in full force : [But so nevs that in case default shl be made in paymt of any of the sd respive sums of ppal or intt, or any pt thof resply within *thirty* days after the day or time hinbfe mentd & appted for paymt thof resply, then & in any such case the whole of the sd ppal sum of £—— or so much thof as shl then remain due & unpd, togr with the intt wch shl have accrued due thron, shl forthwith after such default become payable to the sd B., his exs, ads, or assns, & be recoverable by virtue of the above-written bond.] THEN, &c.

Whole principal to become due on default (c).

III.

BOND for Payment of ANNUITY to ONE of TWO PERSONS and the SURVIVOR of them for their respective LIVES.
Variation for annuity to HUSBAND and WIFE jointly and a REDUCED annuity to the SURVIVOR.

Bond from A. to B. & C., in a penalty of twice the total amt of all the paymts of the anny accdg to its utmost probable duron, see pp. 204, 205.

THE CONDON, &c., is such that if the above bounden A., his hrs, exs, or ads, shl pay to the sd B. durg his life an anny or yrly sum of £——, by 4 equal qtrly paymts, on the — day of —, &c., in every yr, & shl pay an apportioned pt of

Condition.

For payment of annuity quarterly.

(c) That this stipulation is valid and enforceable, see *Sterne v. Beck*, 1 De G. J. & S. 595; *Protector, &c., Co. v. Grice*, 5 Q. B. D. 592; *Ex parte Burden*, 16 Ch. D. 675. As to what amounts to a waiver of the provision, see *Langridge v. Payne*, 2 J. & H. 423; *Williams v. Stern*, 5 Q. B. D. 409.

Variation
for annuity
to husband
and wife.

such anny up to the day of the death of the sd B. to his exs, or ads (a), & shl make the first of such paymts on the — day of — next, & shl also, in case the sd C. shl survive the sd B., pay to the sd C. durg the then remr of his life a like anny or yrly sum of £—, payable on the like qtrly days, & shl pay an apportioned pt of such last-mentd anny up to the death of the sd C. to his exs or ads, the first qtrly instalmt of such last-mentd anny or a proportionate pt thof, for the interval betn the death of the sd B. & the first of the sd qtrly days wch shl happen thrafter, to be payable on such last-mentd day, AND shl make all the sd paymts witht any dedon (except for income-tax), [*for an anny to husbd & wife & a reduced anny to the survor, say, “*shl pay to the sd B. & C. his wife durg their jt lives an anny of £— sterlg, & to the survor of them from & after the death of such one of them as shl first die durg the remr of the life of such survor an anny of £— sterlg, such respive annies to be considered as accruing from day to day, but to be payable by equal qtrly paymts on the — day of —, &c., in every yr witht any dedon (except for income-tax), & the first qtrly paymt to be made on the — day of — now next ensuing, & so that if eir of the sd annuitants shl die in the interval betn any two of the sd qtrly days of paymt an apportioned pt of such respive annies (as the case may be) shl be payable to the survor of the sd annuitants (whose rect shl be a good dischge for the same), or to the exs or ads of such survor (as the case may be):] [Provd that the sd anny of £— payable durg the jt lives of the sd annuitants shl be payable as to one moiety thof to the sd B. on his sole rect, & as to the other moiety thof to the sd C. as her septe este & on her sole rect, & so that she shl not have power durg her coverture to dispose of or chge her intt in eir of the sd annies by anticipon (b).”] THEN, &c.

(a) The provisions for apportionment might probably be omitted; see the Apportionment Act 1870 (33 & 34 Vict. c. 35).

As to
change
effected by
M. W. P.
Act, 1882.

(b) In the absence of this clause, under the old law the husband might have charged or assigned the whole annuity during their joint lives, and the whole of it would have gone to his creditors in bankruptcy; *Ward v. Ward*, 14 Ch. D. 506; *Re Bryan*, *ib.* 516; but under the new law since the Married Women's Property Act, 1882, the husband would only take half, and the other half would go to the wife for her separate use, and could not be affected by the husband or his creditors; *Re March*, 27 Ch. D. 166;

IV.

BOND *by a PRINCIPAL and TWO SURETIES for securing the BALANCE due on an ACCOUNT CURRENT with a BANKING COMPANY, with a PROVISIO LIMITING the LIABILITY of the SURETIES. VARIATIONS where the CUSTOMERS and the BANK are both FIRMS, and the Security is to be continued notwithstanding a CHANGE in either FIRM; also where a FRESH BOND is to be SUBSTITUTED on a CHANGE in the CUSTOMERS' FIRM (c).*

It & sevl bond from A., ppal debtor, & C. & D., sureties, to the — Bank Limd, & their assns, or from A. & B., ppal debtors, "carrying on business in co-ptnp togr at, &c., as —, under the firm of A. & Co.," & C. & D., sureties to L., M., & N., "bankers & co-ptners, carrying on business at, &c., under the firm of L. & Co.," see p. 205.

WHAS the sd Bank [firm of L. & Co.] at the reqt of the sd A. [& B.], have agrd to open & keep an acct with him [them], & to make advces to or for the accomodon of the sd A. [& B., & other the pson or psons who may hrafter be in ptnp with them or eir of them in the sd business now carried on by the sd firm of A. & Co.], upon havg the paymt of the balce wch may be from time to time due on any such acct to the sd Bank [the sd bankg firm, or the psons or pson for the time being carrying on the sd bankg business], secd by the jt & sevl bond of the sd A. [& B.] & the sd C. & D. as sureties for him [them]. NOW THE CONDON, &c., that if the sd A., [B.] C., & D., or any of them, or the hrs, exs, or ads of them

Recital of agreement.

Condition

Re Jupp, 39 Ch. D. 148, commented on in *Re Dixon*, 42 Ch. D. 306. As to the effect of a gift to A. and B. (husband and wife) and C., with reference to the old doctrine of the unity of husband and wife, and tenancy by entireties, as affected by the Married Women's Property Act, 1882, see *Re March*, *ubi supra*, *Thornley v. Thornley*, 1893, 2 Ch. 229.

(c) See also the forms of guarantees to bankers, pp. 40, 43. A deed of covenant might in this case be more convenient in form than a bond. If one surety executes the bond and the other does not, the former is discharged; *Evans v. Bremridge*, 8 De G. M. & G. 100. As to non-execution by principal, see *Cooper v. Evans*, 4 Eq. 45. As to continuing guarantee being revoked by a change in the constitution of either firm, in the absence of agreement to the contrary, see Partnership Act, 1890 (53 & 54 Vict. c. 39), s. 18; *ante*, p. 42, note. As to guarantees generally, see Goodeve, P. P. 176.

Guarantees to bankers

or any of them shl from time to time, & at all times hrafter, pay or cause to be pd to the sd Bank or their assns [to the sd bankg firm, or the psons or pson for the time being carrying on the bankg business now carried on by the same firm, or their or his respive exs, ads, or assns], All such sums of moy as shl at any time be due to the sd Bank or their assns [to the sd bankg firm, or the psons or pson for the time being carrying on the sd bankg business, or their or his respive exs, ads, or assns] by or from the sd A., his exs or ads, [the sd A. & B., or eir of them, alone or jtly with any other pson or psons who may hrafter carry on the business now carried on under the sd firm of A. & Co. in ptnp with them or eir of them, or by or from the exs or ads of them, him, or any of them], for or on acct of bills, drafts, or notes accepted, pd, or discounted, or advces or paymts made to or for the use, accomodon, or convenience of the sd A., his exs or ads [the sd A. & B. or eir of them, alone or jtly with any future ptner or ptners in their sd business, or the exs or ads of them, him or any of them], or for or on acct of intt, commission, or any other usual or lful chges wch may be payable in respt of or incident to the transons afsd, or any of them, togr with all costs & expses wch may be incurred or sustained by reason or in conseqce of the premes: AND so that the neglect or forbearce of the sd Bank or their assns [the sd bankg firm or the pson or psons from time to time carrying on the sd bankg business] in enforcg paymt of any moys, the paymt whof is intd to be hby secd, or the givg time by them [them or him] for the paymt thof, shl not in any way rele the sd C. & D., or eir of them, their or eir of their hrs, exs, or ads, in respt of their or his liability under the above-written bond (a):

Giving
time for
payment
not to
release
sureties.

Release of
surety.

(a) As to the doctrine that a surety is released by the creditor giving time to the principal debtor without his consent, or any other act altering the position of the surety to his prejudice, a doctrine which is applied with great strictness, and to exclude which so as to make the position of the creditor secure, the insertion of a special clause in the contract is often necessary, see the notes to *Rees v. Berrington*, 2 W. & T. Lead. Cas. Eq.; 2 Dav. Prec., Part 2, p. 503; Goodeve, P. P., 179, note (m). As to the effect of releasing a co-surety, see *Mercantile Bank of Sydney v. Taylor*, [1893] A. C. 317; as to the effect of the death of a co-surety, see *Beckett v. Addyman*, 9 Q. B. D. 783, *Re Sylvester*, [1895] 1 Ch. 573; and as to bankruptcy, see the Bankruptcy Act, 1883, s. 30 (4).

BUT so also that the total amt to be recoverable on the sd bond agst eir of them the sd C. & D., or his hrs, exs, or ads shl not exceed £—— : [OR in case any change shl at any time take place in the sd firm of A. & Co., by the death or retiremt of the psnt ptners or eir of them, or the admission of any new ptner or ptners or orwise, then if the sd A. & B., or their respive hrs, exs, or ads shl procure both or all the ptners for the time being in the sd firm, togr with the sd C. & D., or their respive exs or ads, at their own costs & chges to exte & deliver to the sd Bank or their assns [the sd bankg firm or the psons or pson for the time being entled to the benefit of the above-written bond] a bond similar to the above-written bond, & in the like penalty, & with a condon similar to this psnt condon, includg this psnt clause, but with the names of the ptners for the time being in the sd firm of A. & Co. substituted for the names of the sd A. & B., & with such other alterons as the deaths of pties or other changes of circes may require]. THEN, &c.

Provision
limiting
liability.
Provision
for change
in firm of
obligora.

V.

BOND *by an INTENDED HUSBAND for securing a SUM of MONEY to the INTENDED WIFE in case of her SURVIVING him. VARIATIONS where it is to EXERCISE a general TESTAMENTARY POWER of APPOINTMENT in her favour (b).*

Bond from A., intd husbd, to C. & D., trees, see pp. 204, 205.

Recital of intd marre betn A. & B., [& instrumts creatg power of apptmt, if any.] AND WHAS upon the treaty for the sd intd marre, it was agrd that in conson of such marre, the sd A. shd secure to the sd B. the sum of £——, in the event of her

Recitals.
Agreement
to execute
bond.

(b) It is safer until a decision as to the effect of the Married Women's Property Act, 1882, on an ante-nuptial contract of this nature, appears to give the bond to trustees. As to the effect of such ante-nuptial contracts under the old law, see *Fitzgerald v. Fitzgerald*, L. R. 2 P. C. 83; and as to post-nuptial contracts, see *Butler v. Butler*, 14 Q. B. D. 831, 16 Q. B. D. 374. An obligation for payment of money after death constitutes a debt proveable in the bankruptcy of the obligor; *Barnett v. King*, [1891] 1 Ch. 4.

As to ante-
nuptial
contracts
between
husband
and wife.
Bank-
ruptcy of
obligor.

surviving him, by entering into the above-written bond with the sd C. & D., as trustees for the sd B., with such condition for making void the same as is hereunder written: NOW THE CONDITION, &c., that if the sd intended marriage shall take place within six calendar months from the date of the above-written bond, & the sd B. shall survive the sd A., & the executors or administrators of the sd A. shall pay [or, the sd A. shall, by his will or any codicil thereto in exercise of the sd power of appointment, bequeath or direct to be paid or otherwise secure (a)] to the sd B. the sum of £——, to be paid to her or her executors or administrators within —— calendar months after the decease of the sd A. without any deduction, & the same shall be duly paid accordingly without any deduction, or if the sd intended marriage shall not take place within six calendar months from the date of the above-written bond, or if the sd B. shall not survive the sd A., THEN, &c:

VI.

BOND from a LESSEE and SURETY for PAYMENT of RENT, &c.

It is a sealed bond from A., the lessee, & B., the surety, to C., the lessor, see pp. 204, 205.

Recitals. *Recital of lease from C. to A.:* AND WHEREAS the sd lease was agreed to be granted by the sd C. upon condition that the above bounden B. should join as a surety with the sd A., in a bond for the due payment of the rent reserved by [& performance of the covenants & conditions contained in] the sd lease: NOW THE CONDITION, &c., that if the sd A., his executors, administrators, or assigns, or the sd B., his heirs, executors, or administrators, during the continuance of the sd lease, duly pay to the sd C., his heirs [or, if an underlease, executors, administrators] or assigns, the rent thereby reserved upon the respective days thereby appointed for payment thereof, or within —— days next after such respective days

As to covenant to exercise a testamentary power of appointment.

(a) A covenant to exercise a testamentary power of appointment in a particular way, or not to exercise it in any other way, is not specifically enforceable, and could only be made the foundation of an action for damages against the representatives of the covenantor; but, if the power is exercised in contravention of the covenant, the appointed fund would be assets for payment of debts, including the debt under the covenant; *Re Parkin*, [1892] 3 Ch. 510.

[& shl durg the continuce of the sd lease duly observe & pform all & singr the covts & condons thrin contd, & on the pt of the sd A., his exs, ads, & assns, to be observed & pformed]: AND so that, &c., *givg time for paymt of rent, &c., not to dischge B.*, p. 210, *mutatis mutandis*, THEN, &c.

VII.

BOND *by a RENT COLLECTOR or other AGENT to* ACCOUNT (b).

Bond from A. to B., see pp. 204, 205.

Recital of apptmt of A.: NOW THE CONDON, &c., that if the above bounden A., his exs or ads, shl at all times hrafter whenever required by the sd B., his [hrs] exs, ads, or assns, render to him or them a true & full acct of all sums of moy reced, pd, & disbursed by the sd A., as such recer [agent] as afsd, or orwise for or on acct of the sd B., his [hrs] exs, ads, or assns, & shl duly pay to the sd B., his [hrs] exs, ads, or assns, on demand all & every the sum & sums with or for wch the sd A., his exs or ads, shl be chgeable or acctable in respt of such receivership [agency] as afsd, togr with all costs, damages, & expses occasioned by any default on the pt of the sd A. in the pformce of his duties as such recer [agent] as afsd, & shl at any time on demand pduce, transfer, or deliver to the sd B., his [hrs] exs, ads or assns, all secs, books, & papers belongg to him or them wch shl be in the hands or custody of the sd A., his exs or ads, togr with the legal or pper rects or vouchers for the paymts & disbursemts afsd, THEN, &c.

(b) Private bonds of this kind are probably much less common than formerly, owing to the action of the guarantee societies. For cases of actions on such bonds, see *Belfast Banking Co. v. Hamilton*, 12 L. R. (Ir.) 105, and *Guardians of Thornbury v. Greenfield*, Law Journal Newspaper, 1887, p. 452; *Mayor of Durham v. Fowler*, 22 Q. B. D. 894.

VIII.

BOND with Two Sureties for the FIDELITY of a CLERK or other person in the Employment of a sole TRADER or FIRM (so as to KEEP ALIVE the OBLIGATION notwithstanding any CHANGE in the PERSONS carrying on the business) or a PUBLIC COMPANY; the SURETIES being Liable to a LIMITED AMOUNT. VARIATION where the CLERK is ELECTED ANNUALLY by a Company (a).

It & sevl bond from A. (clerk) & B. & C. (sureties), to D. or D. & E., "carrying on business in co-ptnp togr as, &c.," or to "the — Co," see p. 205.

**Recitals.
Service.**

WHAS the sd D. [& E.], or, "the sd Co," has [have] agrd to take the above-named A. into his [their] service as clerk, or to act in such other capacity as the sd D. [& E.], or other the pson or psons for the time being carrying on the above-mentd business of —, or, "the Board of Dirors of the sd Co," may from time to time require or appt, or as may be from time to time agrd upon with the sd A. [for the period of 1 yr from the — day of —], upon the sd A. & the sd B. & C., as sureties for him, enterg into the above-written bond or obligon for the fidelity of the sd A., while in such employmt

**Security to
continue.**

as afsd: [AND WHAS the sd A. may hrafter be re-elected to or continued in such office from time to time for some further period or periods, & it is intd & agrd that this secy shl be & remain in force durg the whole of the time durg wch the sd A. shl be in the service of, or employed by the sd Co in such

Condition.

capacity or in any other capacity] (b). NOW THE CONDON, &c., that if the sd A. shl at all times hrafter, so long as he shl be in the service or employmt of the sd D. [& E. or eir of them] alone or jtly with any other pson or psons who may from time to time carry on the sd business of — in ptnp with him [them or eir of them], or of any other pson or psons

(a) Forms of bonds of this kind are given in some statutes, e.g., in the schedule to the Building Societies Act, 1874. See notes to Precedent IV., ante.

(b) If the office be an annual one, due performance for one year wou d, unless otherwise provided, satisfy the bond; 2 Wms. Saunders, 415 b, note (h).

who may hereafter carry on such business after the death or retirement of the sd D. [or E.], *or*, "of the sd Co," as clerk or in any other capacity [whether by virtue of his present appointment to such office or of any reappointment thither or otherwise,] faithfully, honestly, & diligently perform & discharge the sd service & all the duties which may devolve upon the sd A., as such clerk or otherwise as aforesaid, & shall, whenever required, duly & faithfully account for & pay or deliver to the sd D. [& E.,] or the person or persons from time to time carrying on the sd business as aforesaid, or the executors or administrators of him, them, or any of them, *or*, "to the sd Co," for all money, goods, & property whatsoever for or with which the sd A. may be in anywise accountable or chargeable as such clerk or otherwise as aforesaid: *Or*, in case the sd A., B., & C., or any of them, their or any of their heirs, executors, or administrators shall, when required, make satisfaction to the sd D. [& E.,] or the person or persons from time to time carrying on the sd business as aforesaid, or the executors or administrators of him, them, or any of them, *or*, "to the sd Co," for all moneys, goods, or property which may be lost, misapplied, or unlawfully disposed of by the sd A. while in such service or employment as aforesaid, or shall not be duly accounted for or paid or delivered as aforesaid; & shall keep the sd D. [& E., & each of them,] & such person or persons as aforesaid, & the executors or administrators of him, them, & every of them, *or*, "the sd Co," indemnified against all losses, damages, & expenses whatsoever, by reason or in consequence of any such act or default of the sd A.: *And* so that any forgiveness or forbearance on the part of the persons or person from time to time carrying on the sd business, or the executors or administrators of any such persons or person or any of them, *or*, "the sd Co," towards the sd A. in respect of his failure or neglect to perform such services & duties, or to make such payments as aforesaid, shall not in any way release or exonerate the sd B. & C., or either of them, their or either of their heirs, executors, or administrators, in respect of their or his liability under the above-written bond: *But* so also that each of them, the sd B. & C., or his heirs, executors, or administrators, shall not separately or individually be liable to pay a larger sum than £——, by virtue of the above-written bond, *Then*, &c.

Giving
time not
to affect
liability of
sureties.

Limitation
of liability
of sureties.

IX.

BOND *by a PERSON in an OFFICE of PUBLIC TRUST, with SURETY to ACCOUNT (a).*

It & sevl bond from A. & B. to C. (b), see pp. 204, 205 : THE CONDON, &c., that if the sd A., his ex or ads, shl from time to time & at all times hrafter duly & faithfully acct for, apply, pay, transfer, & deliver up all & every the sum & sums of moy & ppty wch shl come to the hands or posson of him, the sd A., or for or with wch he shl be chgeable or acctable by virtue of his office of —, or in conseqce of his apptmt to such office [accdg to the diron & true intent & meang of the statute of the — & — yrs of the reign of her psnt Majesty, chapter —, intituled, &c., or any other statute or statutes or rules or regulons wch may hrafter from time to time be in force for regulatg the sd office or in relon thto] : AND so that, &c., givg time not to affect liability of surety, & limon of liability of surety, p. 215, mutatis mutandis, THEN, &c.

X.

SURETYSHIP BOND *for a PUBLIC OFFICER, for a limited amount (the PRINCIPAL not being a PARTY) (c).*

Bond from A., surety, to B. & C. (d), & the survor of them, his exs or ads, see pp. 204, 205.

Recital of apptmt of D. to office, &c. : NOW THE CONDON, &c., that if the sd D. shl from time to time & at all times well & truly pform & fulfil all the duties required by the statute made, &c., or any other statute now in force or hrafter to be passed in any way relatg to the office of —, or required by any rule or regulon htofore made, or hrafter at any time or times to be made in psuance of any such statute

-
- (a) See variations in the last precedent where the office is an annual one.
 (b) The person to be made obligee will be determined by statute or the practice of the office.
 (c) See variations in Precedent VIII., where the office is an annual one.
 (d) The person to be made obligee will be determined by statute or the practice of the office.

or orwise to be pformed by him the sd D. as such — as afsd, & shl well & faithfully exte all the trusts reposed or wch shl or may be reposed in him as such —, or in case of any default or defaults thrin if the sd D., his hrs, exs, or ads shl from time to time pay to, *some public officer*, for the time being for the use of the pson or psons who shl or may be entled thto or intted thrin all such moys as shl or may be payable by or chgeable to the sd D., his hrs, exs, or ads, for or in respt or in conseqce of such default or defaults, or if the sd A., his hrs, exs, or ads, shl pay such moys to an amt not exceedg in the whole £——, AND so that, &c., *giving time not to affect liability of surety, see p. 215, THEN, &c.*

XI.

BOND by SURETY for the due OBSERVANCE by another of ARTICLES of PARTNERSHIP (e).

Bond from A., surety, to B. & C., see pp. 204, 205.

<p><i>Recite articles of ptnp betn B., C., & D.:</i> AND WHAS it was pt of the arrangemt for takg the sd D. into the sd ptnp that the sd A. shd enter into & exte a bond for the due observe by the sd D. of the sd articles of ptnp: NOW THE CONDON, &c., that if the sd D. shl faithfully pform & observe all & every the terms, provons & agrmts in the sd articles of ptnp contd & on his pt to be pformed & observed, & if the sd A., his hrs, exs, or ads, shl at all times hrafter keep indemnified the sd B. & C. & their respive hrs, exs, & ads from all losses, costs, chges & expses wch they or any of them shl or may incur or sustain by reason of the breach or non-pformce on the pt of the sd D. of any of the terms, provons & agrmts afsd, or by reason of the sd D. not duly pformg, observg, & complying with any award made by any arbitrors, arbitror or umpire appted under the provons for refce contd in the sd articles of ptnp (f) so & in such mner that he, the sd</p>	<p>Recitals.</p> <p>Agreement for bond.</p> <p>Condition.</p>
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(e) A suretyship bond for the observance of any other kind of agreement may be readily framed from this.

(f) In the absence of special agreement the surety is not bound by a judgment or award against the principal; *Ex parte Young*, 17 Ch. D. 668.

A., his hrs, exs & ads, shl be answerable to the sd B. & C. & their respive exs & ads for such losses, costs, chges & expses in the same mner as if he the sd A. had been a pty to the sd articles of ptnp, & had been thby constituted a ptner in the sd business in the place of the sd D., & had entd into the agrmts & engagemts thrin contd on the pt of the sd D., & not further or orwise, But so that any alteron wch may be made in the terms of the sd contract of ptnp or, &c., *givg time, &c., not to affect liability of surety*, p. 215, *mutatis mutandis*, THEN, &c.

XII.

BOND by CONTRACTOR with two SURETIES for performance of a BUILDING CONTRACT (a).

It & sevl bond from A., the contractor, & B. & C., the sureties, to D., the employer, see p. 204.

Recital of
building
contract.

Condition.

Alteration
of contract,
&c., not to
release
sureties (b).

WHAS the sd A. has by an agrmt in writg dated, &c., & made betn the sd A. of the one pt, & the sd D. of the other pt, entd into a contract for bldg a house at, &c.: NOW THE CONDON, &c., that if the sd A., his exs or ads, shl duly pform & observe all the stipulons & agrmts contd in the sd contract & on his & their pt to be pformed & observed: AND so that any alteron wch may be made by agrmt betn the sd A. & D., his [hrs] exs or ads, in the terms of the sd contract or the nature of the work to be done thrunder, or the givg by the sd D., his [hrs] exs or ads, of any extension of time for pformg the sd contract or any of the stipulons thrin contd & on the pt of the sd A. to be pformed or any other forgive-ness or forbearce on the pt of the sd D., his [hrs] exs or ads to the sd A. his exs or ads, shl not in any way rele the sd B. & C. or eir of them or eir of their hrs, exs, or ads from their or his liability under the above written bond. THEN, &c.

(a) See notes to Precedent IV., *ante*.

(b) As to what would amount to such an alteration in the position of the sureties, in a case of this kind, as to release them from the contract, see *Mayor, &c., of Hull v. Harding*, [1892] 2 Q. B. 494.

XIII.

BOND *not to carry on a certain TRADE or BUSINESS within certain LIMITS (c). VARIATION where a SUM is fixed as LIQUIDATED DAMAGES for any default.*

Bond from A. to B., see p. 204.

Recitals of the circes under wch the bond is given: AND WHAS the sd A. has agrd with the sd B. that he (d) will not set up or carry on the business of — afsd in the sd town of — or within — miles thof, or solicit the custom of any of the customers of the sd B. as hinafter mentd [or orwise to pay to the sd B. £—, as liquidated damages]: BUT so that nothg hrin contd shl prejudice or affect the rt of the sd B., his exs, ads, or assns, to restrain by injon any breach on the pt of the sd A. of the sd agrmt, & to recover damages agst him or his exs or ads for any antecedent breach thof, in lieu of takg pcdgs agst him or them under the above-written bond (e): NOW THE CONDON, &c., that if the sd A. (d) shl not at any time hrafter [durg — yrs from the date of the above-written bond] directly or indirectly, & eir alone or in ptnp with or as agent, clerk or servant of any other pson or psons or orwise howsr set up or carry on the trade or business of —, or any branch thof, or any trade or business connected thwith, or buy, sell, or orwise deal in any of the articles of the sd trade or business within the sd town of —, or within — miles from the [town-hall thof], witht the consent in writg of the sd B., or of the pson or psons for the time being carrying on the trade or business now carried on by the sd B. at — afsd, being first obtained for that ppose; AND if the sd A. (d) shl not eir by himself [herself] or by any other pson or psons, eir on behalf of himself [herself] or any other pson or psons, at any time hrafter [durg the sd term

Reserva-
tion of
right to
sue for in-
junction or
damages.

Condition.

(c) As to bond in restraint of trade, see *ante*, p. 30, note (g).

(d) "or his wife or widow," see *Smith v. Hancock*, [1894] 2 Ch. 377; and make consequential alterations.

(e) As to when an injunction will be granted to restrain an act against which a bond is given, see *Coles v. Sims*, 5 De G. M. & G. 1; *Howard v. Woodward*, 13 W. R. 132; *Fox v. Scard*, 33 Beav. 327; *Palmer v. Mallet*, 36 Ch. D. 411; *London, &c., Bank v. Pritt*, W. N. 1887, 137, 31 Sol. J. 607; *National, &c., Bank v. Marshall*, 40 Ch. D. 112.

Injunction
when
granted.

Provision
for liqui-
dated dam-
ages (b).

of — yrs], solicit or endeavour to obtain the custom or connon of any of the psons who are now [or may hrafter from time to time while the sd A. shl be in the service of the sd B. be] (a), the customers of the sd B. or of the pson or psons for the time being carrying on his sd trade or business in or in connon with such trade or business: [Or, in the event of the sd A. his wife or widow in any respt failg to observe any of the condons hinfte expd, then & in such case if the sd A., his exs or ads, shl forthwith pay to the sd B., his exs, ads, or assns, the sum of £—— as liquidated & ascertained damages for such default, & not as a penalty, witht any dedon:] THEN, &c. (c).

Penalties
and liqui-
dated
damages.

(a) See *Baines v. Geary*, 35 Ch. D. 154; *ante*, p. 81, note.

(b) The question whether the sum named is to be taken as a penalty or as liquidated damages turns on the intention of the parties, to be collected from the whole instrument, and the mere use of the term "penalty" or "liquidated damages," is not sufficient by itself to determine the question, *Betts v. Burch*, 4 H. & N. 506; see *Elph. N. & C. Interp.* pp. 428 *et seq.*, where the cases are collected. It has been repeatedly held that, where the same sum is stipulated as recoverable for the breach of every article in the agreement, whether important or unimportant, it will be regarded as a penalty, notwithstanding that the agreement declares not only affirmatively that it shall be taken as liquidated damages, but also negatively that it shall not be taken as a penalty. But the parties may by agreement settle the amount of damages, uncertain in their nature, in respect of the performance or omission of a particular act at such sum as they may agree upon as liquidated damages. See 1 Wms. Saunders, 58 b, note (d); *Lea v. Whitaker*, L. R. 8 C. P. 70; *Magee v. Lavell*, L. R. 9 C. P. 107; *Re Newman*, 4 Ch. D. 724; *Law v. L. B. of Redditch*, [1892] 1 Q. B. 127; *Elphinstone (Lord) v. Monkland Co.*, 11 App. Ca. 332. The authorities on this subject were elaborately reviewed by the Court of Appeal in *Wallis v. Smith*, 21 Ch. D. 243.

Agree-
ments in
restraint
of trade;
penal
clauses.

As to the construction and effect of penal clauses in agreements not to carry on trade, see *Avery v. Langford*, Kay, 663; *Leighton v. Wales*, 3 M. & W. 545; *Green v. Price*, 13 M. & W. 695, *S. C. in error*, 16 M. & W. 346; *Galsworthy v. Strutt*, 1 Ex. 659; *Atkyns v. Kinnier*, 4 Ex. 776; *Sainter v. Ferguson*, 7 C. B. 716; *Mercer v. Irving*, El. Bl. & El. 563; *Reynolds v. Bridge*, 6 El. & Bl. 528. It is not clear that the clause in the text does not fall within the above rule, so that the sum named would be held to be a penalty only; but it is difficult to frame a clause which would be effectual.

(c) A deed of covenant might, in this case, be more convenient.

XIV.

BOND to RESIGN a LIVING (d).

Bond from A. to B., see p. 204.

WHAS the above-named B., as the patron of the vicarage or livg of — in the coy of —, wch is now vacant, has agrd & intends forthwith to psnt the above bounden A. thto, upon the condon or understandg that the sd A. shl, at the request of the sd B., or the patron or patrons for the time being of the sd livg, resign & relinquish the same to the intent that the sd B. or such patron or patrons may psnt thto C. or D. (two of the sons of the sd B.), if & when eir of such sons shl be of a sufft age & qualified to hold the same, & that the sd A. shl enter into the above-written bond for the due pformce of the sd engagemt, with such condon for makg void the same as is hinafter contd: NOW THE CONDON, &c., that if the sd A. shl be duly presented, instituted, & inducted to the sd vicarage or livg of —, & eir of them, the sd C. & D. shl, durg the life of the sd A., attn a sufft age & become qualified to hold the sd vicarage or livg, & the sd A. shl, within one calr month after reqt in writg in that behalf made to him or left at his usual or last-known place of abode, by & at the costs & chges of the sd B., or the patron or patrons for the time being of the sd vicarage or livg, absolutely resign, relinquish & yield up the sd vicarage or livg with all the rights & appurts thof, &

Recital.

Condition.

(d) A general resignation bond, i.e., a bond whereby the obligor binds himself to resign a living at the request of the patron, generally, is void; *Bishop of London v. Ffytche*, 2 Br. P. C. 211. A bond to resign in favour of one of two named persons was held void in *Fletcher v. Lord Sondes*, 1 Bligh, N. S., 144; but an Act, 7 & 8 Geo. 4, c. 25, was passed, giving validity to such bonds executed before 9 Apr. 1827. By 9 Geo. 4, c. 94, a bond to resign in favour of one person or one of two persons named and described therein is rendered valid, if executed before presentation, nomination, collation or appointment of the obligor (s. 1), and if, two persons being named, each is within the degree of relationship therein defined to the patron (s. 2), and provided the bond be deposited in the diocesan registry within two months of its date (s. 4). A presentation is valid under an engagement entered into by such a bond (s. 3). The resignation must state the engagement entered into by a bond of this kind, and the name of the person on whose behalf it is made; and it will be void if the person named be not presented within six months (s. 5). The Act is only applicable to cases of patronage as private property (s. 6).

As to bonds to resign livings.

all the este & intt of the sd A. in the same, & procure such resignon to be duly accepted so that the sd vicarage or livg may within such month become vacant, to the intent that the sd B., or such patron or patrons as afsd, may be enabled to psnt thto such one of them, the sd C. & D., as the sd B., or such patron or patrons as afsd, shl think fit, or in case the sd A. shl not be duly presented, instituted, & inducted to the sd vicarage or livg as afsd, or in case neir of them, the sd C. & D., shl durg the life of the sd A. attn a sufft age & become qualified to hold the same, or in case no such reqt as afsd shl be made to the sd A. by the sd B., or such patron or patrons as afsd, THEN & in any of the sd cases, &c.

XV.

POST-OBIT BOND with VARIATION where a SURETY joins.

Bond from A. to C., or jt & sevl bond from A., ppal, & B., surety, to C., see pp. 204, 205.

Recitals.

Expecta-
tion

Ages.

Agreement.

Alternative
form of
agreement.

WHAS the above bounden A. is in expecton of succeedg to a considerable sum of moy or other ppty upon the death of D., of, &c.: AND WHAS the sd A. is now of the age of — yrs or thrabouts & in good health, & the sd D. is of the age of — or thrabouts: AND WHAS the sd A. havg occasion for the sum of £—— to supply his immediate wants, has applied to the above-named C. to lend him the same, wch the sd C. has agrd to do upon the sd A. [& the sd B. as his surety] enterg into the above-written obligon, with such condon for makg void the same as is hinafter contd, for securg the repaymt to the sd C. of the sum of £—— in case the sd A. shl survive the sd D., but not orwise: [or, AND WHAS the above-named C. has contracted with the above-named A. for the pchase of the sum of £——, to be pd to the sd C. in case the sd A. shl survive the sd D., but not orwise, for the price or sum of £——: AND WHAS upon the treaty for the pchase of the sd contingent sum of £——, it was also agrd that the paymt thof in the event afsd shd be seed by the above-written obligon of the sd A. [& the sd B. as his surety], with such condon for makg

void the same as is hinafter contd]: AND WHAS in psuance of the sd agrmt the sd C. has pd the sd sum of £—— to the sd A., as he the sd A. doth hby acknowe: NOW THE CONDON, &c., that if the sd A. shl survive the sd D., & the sd A., his hrs, exs, or ads, [the sd A. & B. or eir of them, or the hrs, exs, or ads of them or eir of them] shl, within —— calr months after the dece of the sd D., pay or cause to be pd to the sd C., his exs, ads, or assns, the sum of £——, witht any dedon, or if the sd A. shl die in the lifetime of the sd D., THEN, &c.

Payment of
money.

Condition.

CONDITIONS OF SALE.

PRELIMINARY NOTE.

THE following is a short notice of the recent statutory provisions (which will apply unless excluded by the terms of the contract), and of some of the principal points bearing on conditions and contracts of sale. Other points are dealt with in the notes to the forms.

1. As to title.

1. As to length of title and abstract. By the Vendor and Purchaser Act, 1874, s. 1, 40 was substituted for 60 years as the commencement of title under a contract for the sale of "land" (which by 52 & 53 Vict. c. 63, s. 3, includes "messuages, tenements and hereditaments, houses and buildings of any tenure," and extends therefore to incorporeal as well as corporeal hereditaments), except in those cases in which an earlier title than 60 years might have been required under the previous law; but this exception is qualified by the enactment in the Conv. Act, 1881, s. 3 (3), mentioned in the next paragraph, making a conveyance a good root of title, although made in exercise of a power in a previous instrument. Where the deed with which the title is to commence, though 40 years old, is exceptional in its nature, or might be objected to as unsuitable (e.g., a voluntary deed of gift: see *Re Marsh*, 24 Ch. D. 11), an express stipulation stating its nature should be inserted.

Title prior to commencement.

By the Conv. Act, 1881, s. 3 (3), on a sale of any "property" (real or personal, see s. 2), the purchaser is precluded from going into the title prior to the time stipulated or prescribed by law for the commencement, even though a power exercised by an abstracted instrument was created previously to such commencement. This, though sufficient for ordinary cases, falls short of the usual express condition in the case of a title commencing with a general devise in a will, in not providing that the ownership of the testator shall be assumed (as to which see Dart, V. & P. 338); and it does not bar an objection to the earlier title which the purchaser may discover from collateral sources (see *Nottingham, &c., Co. v. Butler*, 15 Q. B. D. 261, 16 Q. B. D. 778; see also *Waddell v. Wolfe*, L. R. 9 Q. B. 515; *Re Coz*, [1891] 2 Ch. 109; Dart, 169). In practice, an express provision barring objections in respect of the anterior title is still often inserted, and is desirable except in simple cases. It is to be borne in mind, moreover, that the statutory provision does not apply where the deed forming the root of title is itself defective on its face for want of parties or of due execution or otherwise; and where a conveyance subject to a mortgage then existing and subsequently paid off is made the root of title, the purchaser (as is conceived) would have the right, unless specially barred or qualified, to have the previous title to the

mortgage deduced. See also *infra*, SPECIAL CONDITIONS, as to commencement of title.

By the Conv. Act, 1881, s. 3 (2), on a sale of enfranchised copyhold or customary land, the lord's title cannot be called for. But this does not bar any patent objection to such title; and it does not of course apply to a contract for enfranchisement.

By the same Act, s. 3 (7), on a sale in lots a purchaser of two or more lots held wholly or partially under a common title cannot require more than one abstract of such title, except at his own expense; so that a condition on that point is unnecessary.

2. As to leaseholds. By the V. & P. Act, 1874, s. 2 (1), a purchaser of leaseholds, whether held by lease or underlease, cannot call for the title to the freehold. By the Conv. Act, 1881, s. 3 (1), the purchaser of an underlease cannot call for the title to the leasehold reversion (but he can of course call for an abstract of the underlease itself and the dealings therewith, *Gosling v. Woolf*, [1893] 1 Q. B. 39); and by s. 3 (4, 5), a purchaser of leaseholds is to assume, unless the contrary appears, that the lease, and (in the case of an underlease) that every superior lease was duly granted. These enactments would not bar an objection on account of any defect in the lessor's title which may be patent (such an objection not being covered, as is conceived, by s. 3 (3) of the Conv. Act, 1881), or may be discovered, *aliunde*; see above.

In the case of a sub-sub-lease, the provisions requiring the purchaser to assume the validity of the original and every derivative lease may be sufficiently protective, although the clause, s. 3 (1), precluding the purchaser from calling for the title to the leasehold reversion, would seem to apply only to the immediate (and not to the superior) reversion.

The above provisions as to leaseholds, both in the Act of 1874 and that of 1881, only apply to terms of years, and not to leases for lives, as to which, therefore, the necessary conditions as to title must be inserted.

The enactment in the Act of 1874 limiting the length of title to 40 years would apply to long leaseholds; but the creation of the term would also have to be shown: see *Frend v. Buckley*, L. R. 5 Q. B. 213; Dart, 335.

By the Conv. Act, 1882, s. 4, on the sale of a lease granted under a power, a preliminary contract for or relating to the lease is not to form part of the title. In the case of a building lease granted under the power in the Settled Land Act, 1882, the preliminary contract might be very material to the title; see *Re Chawner*, [1892] 2 Ch. 192.

3. As to recitals being evidence. By the V. & P. Act, 1874, s. 2 (2), recitals, statements, and descriptions of facts, matters, and parties in instruments 20 years old are, unless proved to be inaccurate, to be taken as sufficient evidence. It is perhaps necessary to point out that this provision does not make a sub-recital evidence. In *Bolton v. London School Board*, 7 Ch. D. 766, this was held to apply to a recital of the vendor's seisin, so as to deprive the purchaser of the right, which he would otherwise have had, to have a 40 years' title deduced; a strong decision. The statutory clause is less full than the usual express condition, which extends to matters assumed or implied as well as to actual statements (but see *Re Marsh*, 24 Ch. D. 11, where the Act was held to apply although there was merely an implication); and also (when necessary) makes recitals of documents evidence of their contents and due execution, &c.; and the clause only applies to sales of "hereditaments" (see above). An express condition should be

Enfranchised copyholds.

Abstract of title common to several lots.

2. Leaseholds.

Title to reversion.

As to sub-sub-lease.

Leases for lives.

Long leaseholds.

Contract for lease.

3. Recitals made evidence.

inserted when it is desired to extend it to recitals in deeds less than 20 years old (as often happens); or to making recitals evidence of the contents, &c., of deeds; or on a sale of personalty.

4. Want of covenant for production.

4. As to muniments not in the vendor's possession. The V. & P. Act, 1874, s. 2 (3), debars the purchaser from objecting on account of the want of a legal covenant for production of documents, where he would have an equitable right to their production; but to what cases this applies is not very clear (see Dart, 160); and the clause does not apply to a sale of personalty except leaseholds for years. See the cases collected, 33 Sol. J. 695, 706. Elph. Introduction, 110.

5. Receipt for rent evidence of performance of covenants.

5. By the Conv. Act, 1881, s. 3 (4, 5), on a sale of leaseholds (which in this case would, it is presumed, include a lease for lives, though it would be better not to rely on this), the receipt for the last rent due under the lease prior to completion is made evidence of the performance of the covenants in the lease, and any superior lease, up to completion, and of the payment of the rent under any superior lease, unless the contrary appears. It is conceived that this clause would not apply where there has been a breach of covenant, so as to bind the purchaser to assume that it has been waived, a case which should in general be provided for; and it does not apply to a peppercorn or other nominal rent, so as to make a receipt for such a rent evidence of the performance of covenants (*Re Moody*, 28 Ch. D. 661); and where on a severance the rent has been apportioned or exclusively charged on other property comprised in the lease, the purchaser should be specially barred from requiring proof of the payment of the rent charged on such other property. As to the relief now afforded against forfeiture for breach of covenant by the Conv. Acts, see *post*, LEASES.

6. Expenses.

6. As to expenses. By the Conv. Act, 1881, s. 3 (6), on a sale of any property, real or personal, the purchaser is to bear the expense of any of the following matters which he may require: (a) the production and inspection of all documents not in the vendor's possession, and incidental journeys; (b) searching for, procuring, and verifying all evidences, &c., not in the vendor's possession; (c) all copies or abstracts of or extracts from documents not in the vendor's possession; (d) copies of documents of which possession is retained by the vendor. This provision, as far as it goes, is tantamount to and in no respect more stringent than the condition which was previously usual.

On sub-division (a) it has been decided, that it throws on the purchaser the expense of the production of deeds in the custody of the vendor's mortgagee; *Re Willett and Argenti*, 33 S. J. 359, 60 L. T. 735, a decision which certainly alters what was previously the well-recognised practice, and the construction generally put on the usual express condition, which was substantially the same as the statutory provision; see the discussion in 29 Sol. J. 692, 702; 30 Sol. J. 562.

On sub-division (b), see *Re Moody*, 28 Ch. D. 661. The clause would seem not to cover the expense of obtaining letters of administration to a deceased person, which was often provided for by the express condition, and must still be so if intended.

Vendor's liability under Conv. Act.

On sub-division (c) in *Re Johnson*, 28 Ch. D. 84, on app., 30 Ch. D. 42, it was held on appeal, reversing the decision below, that the clause assumes that a proper abstract deducing the title from the commencement has been already delivered, and does not exonerate the vendor from furnishing

such abstract at his own expense, although the deeds may be out of his possession. If the vendor desires to protect himself in this respect he must do so by an express condition.

Sub-division (d) of course applies to documents delivered to the purchaser of another lot. It does not (as the old common form of condition did) throw on the purchaser the expense of furnishing him, during the investigation of the title, with copies of documents which are to be handed over to him on completion; but this does not appear very material, and it is not usual to extend the condition in this respect.

In addition to the expenses provided for by this clause, the old form of condition usually threw on the purchaser the expense of stamping unstamped and insufficiently stamped documents, and of registering unregistered documents. As to stamping, it is not clear (having regard to *Abbott v. Stratten*, 3 J. & L. 603) that this condition was valid; now, however, by the Customs and Inland Revenue Act, 1888 (51 Vict. c. 8, s. 20), such a condition is expressly invalidated as to documents dated after the passing of the Act (16th May, 1888). In future, therefore, it can only have a limited operation.

Except as above mentioned, the statutory clause as to expenses is sufficiently comprehensive, and is now commonly relied upon in practice.

7. As to the vendor's covenants for title, or, in the case of trustees or mortgagees, against incumbrances, and as to the implication of such covenants under the Conv. Act, 1881, s. 7, by the use of the statutory language, see CONVEYANCES ON SALE.

8. As to the muniments to be retained by the vendor. By the V. & P. Act, 1874, s. 2 (5), where the vendor retains any part of an "estate" to which any documents of title relate, he is entitled to retain them; but this does not apply to documents relating to property other than an "estate," e.g., a settlement relating to personalty; and as the right of the purchaser to a covenant for production of the muniments retained is left to implication, an express provision should be inserted where any muniments are retained. As to the law, apart from statute, as to the right to the possession of the deeds, see 33 Sol. J. 671: Elph. Introduction, 108.

By the same Act, s. 2 (4), the expense of covenants for production required by the purchaser (other than of the perusal on behalf of and execution by the vendor or covenantor), is to be borne by the purchaser.

As to covenants for production, &c., of muniments retained by the vendor, and as to the adoption in practice of the statutory form of acknowledgment of the right to production and undertaking for safe custody in lieu of the old form of covenant by virtue of the Conv. Act, 1881, s. 9; and as to trustees and mortgagees giving the acknowledgment only without the undertaking, see CONVEYANCES ON SALE.

The above-mentioned statutory provisions are principally of value for the protection of vendors selling under open contracts, but they may be and are in practice to a great extent relied on in ordinary conditions and contracts of sale; except that, so far as they depend on the V. & P. Act, 1874, they do not apply to sales of personalty other than leaseholds for years.

Although it has been questioned whether an easement in a hereditament (*Hood & Challis*, Conv. Acts, 141; *Goodeve*, R. P., p. 13, note; 34 Sol. J., 689), it has been decided that a contract to grant an easement is within the V. & P. Act, 1874, s. 2 (*Jones v. Watts*, 43 Ch. D. 574); it would

Documents delivered to purchaser of another lot.

As to stamping.

7. Covenants for title, &c.

8. Muniments to be retained by vendor.

Expense of covenants for production.

As to covenants for production.

General effect of statutory provisions

As to contract to grant an easement.

equally (if amounting to a contract for sale) be within the Conv. Act, 1881, s. 8.

Sales by tenants for life. The case of a tenant for life selling under the powers of the Settled Land Act, 1882, does not generally necessitate any special condition, unless it be a provision regulating the covenants of the vendor or his trustees as to title and production of muniments.

Sales by trustees. As to the powers of trustees for sale to sell by auction or private contract and subject to any conditions as to title, &c., see 23 & 24 Vict. c. 145, ss. 1 and 2, which (though now repealed by the Settled Land Act, 1882, s. 64) remain in force as to trusts created between the 28th August, 1860, and the 1st January, 1883, but apply to "land" (as to which see p. 224) only; see also the Trustee Act, 1893, repealing, and by s. 13 re-enacting the Conv. Act, 1881, s. 35, applying to trusts under instruments coming into operation since the 31st December, 1881, and to any kind of property, real or personal. Neither of these enactments applies to executors.

As to depreciatory conditions, It has been held that the employment of unnecessarily depreciatory conditions on a sale by trustees is a breach of trust which vitiates the contract, and entitles the purchaser to repudiate it (*Dance v. Goldingham*, 8 Ch. 902; *Dunn v. Flood*, 25 Ch. D. 629; 28 Ch. D. 586); but this doctrine (which was productive of great inconvenience in practice, without any compensating advantage to the beneficiaries) has been modified in a very beneficial manner by the Trustee Act, 1888, 51 & 52 Vict. c. 59, s. 3, repealed by the Trustee Act, 1893, and by s. 14 re-enacted, enacting that a sale under such circumstances by trustees (which includes executors and administrators, and extends to constructive and implied trusts: see s. 1) shall not be impeachable by any *cestui que trust* unless it appears that the consideration was thereby rendered inadequate; and shall not be impeached after the conveyance against the purchaser, except in case of collusion; and that a purchaser shall not be at liberty to object to the title on this ground. This puts the law on a satisfactory footing, but the reckless insertion of needlessly stringent conditions, such as appear to be in common use in some quarters, should be avoided.

on sales by tenants for life. The doctrine in *Dunn v. Flood* applied, it is presumed, to tenants for life selling under the Settled Land Act, 1882 (see s. 53), and the Trustee Acts, 1888 and 1893 also (it is conceived), apply to them, though this might have been more clearly expressed.

As to the power of trustees to join with co-owners or owners of other property in selling, see *Re Cooper*, 4 Ch. D. 802, and the cases there cited, and the Trustee Act, 1893, repealing, and by s. 13 re-enacting, the Conv. Act, 1881, s. 35. It is doubtful, in the absence of judicial decision, whether the Trustee Act, 1893, s. 4 permits trustees to concur in selling with owners of adjacent property which is subject to depreciatory conditions. Probably it would be held that the *onus* lies on the trustees of showing that a higher price has been thereby obtained.

Protection of trustees and solicitors adopting statutory provisions. See also the important provisions in the Trustee Act, 1893, repealing, and by s. 15 re-enacting, the V. & P. Act, 1874, s. 3, protecting trustees who sell or buy without excluding the application of that Act; and in the Conv. Act, 1881, s. 66, protecting solicitors and trustees and executors who adopt the provisions of that Act, or omit to negative or exclude them, so that such adoption or omission will not be a breach of trust or duty, or involve them in liability.

As to In the case of a married woman trustee, it should be borne in mind that

under the old law she could not enter into a valid contract for sale except by deed acknowledged with the concurrence of her husband (*Avery v. Griffin*, 6 Eq. 606), and that it is by no means clear that her disability is removed by the Married Women's Property Act, 1882, as the power to enter into contracts given by the Act only enables her to bind her separate estate generally, and it is not clear that the powers of disposition under the Act apply to trust estates; and her power to give receipts for purchase-money is also questionable. It would seem also that she could not in general convey to the purchaser except with the old formalities, although it is otherwise when she is a bare trustee under the V. & P. Act, 1874, s. 6, now repealed and re-enacted by the Trustee Act, 1893, s. 16 (*Re Docwra*, 29 Ch. D. 693).

married
women
trustees.

In drafting special conditions it should be remembered that a condition must not be misleading (see Dart, 170); but a condition requiring the purchaser to assume facts which the vendor believes to be true, although entirely unsupported by evidence, is not of this nature, and it is unnecessary to state the specific defect which the condition is intended to cover, see *Re Sandbach*, [1891] 1 Ch. 99.

As to mis-
leading
conditions.

See further as to the law and practice on the subject of conditions and contracts of sale, Dart, chaps. iv.—vii., pp. 122 *et seq.*; 1 Dav. Prec. pp. 415 *et seq.*

In some places it is the very objectionable practice not to print the conditions of sale for circulation, but merely to read them out in the auction room; see *Torrance v. Bolton*, 8 Ch. 118, for an instance of the mischief arising from this.

I.

GENERAL CONDITIONS on SALE by AUCTION of a FREEHOLD shop. VARIATIONS for several shops sold in LOTS, a concise form (a); and for leaseholds.

1. THE highest bidder [for each lot] sh^l be the pchaser & if any dispute arise as to any biddg the ppty [lot] sh^l be put up again at the last undisputed biddg. There will be a reserve price [for each lot] & the vendors or their agents sh^l be at liberty to bid. The amt of the advance of each biddg sh^l be regulated by the auctioneer & no biddg sh^l be retracted.

Biddings.

2. THE shop & tenants' fixtures & fittgs [on each lot] sh^l be pd for by the pchaser in addon to the amt of his biddg at the

Valuation
of fixtures.

(a) For a full form with variations adapted to various circumstances see Precedent II. as to freeholds and copyholds, and Precedent III. as to leaseholds. The form of conditions on a sale by the Court will be found in Appendix L. No. 15 to R. S. C.

price named in the parlars, & the amt of such price [*or, psuant to a valuon to be made at the jt expense of the vendor & the pchaser by Mr. —, or failg such valuon at their fair value, & the amt of such valuon*] shl for all the pposes of these condons (except as to paymt of the deposit) be deemed pt of the pchase moy & the decision of Mr. — as to what are shop & tenants' fixtures & fittgs shl be conclusive.

Deposit
and com-
pletion.

3. THE [Each] pchaser shl immedly after the sale pay to the auctioneer a deposit of £—— p.c. on his pchase moy & sign an agrmt in the form subjoined & shl pay the residue of the pchase-moy [*togr with amt of the agrd valuon or the price of the fixtures*] to the vendors or as they shl direct on the —— day of —— at the office of the vendors' solors, Messrs. —— at —— at wch time & place the pchase shl be completed.

Possession
and
interest.

4. THE [Each] pchaser shl on the complon of the pchase be let into posson or rect of the rents as from the sd —— day of —— next, up to wch day all outgoings will be dischged by the vendors; the rents & outgoings being, if necy, apportioned for this ppose. If from any cause whatever other than the wilful default of the vendors, the pchase [*of any lot*] shl not be completed on or bfe the —— day of —— next, the pchaser shl pay to the vendors intt on the balce of the pchase-moy [*& the amt of the afsd valuon or the price of the fixtures*] at the rate of —— p.c. p.a. from that day until the complon of the pchase, & shl not be entled to any compenson for the vendors' delay or orwise, but this stipulon is witht prejudice to the vendors' rts under any other of these condons.

Outgoings,
easements,
tenancies.

5. THE ppty is sold subjt to all outgoings & incidents of tenure, easemts, & other rts, & the [*under*] leases or agrmts with the tenants, copies of wch if in writg will be produced at the sale, or may be seen prevsly at the office of the vendors' solor, & the [each] pchaser shl be deemed to have full notice of the contents thof (a).

(a) For leaseholds add "the lease [*or underlease*] under wch the ppty [each lot] is held & counterpts of the underleases or agrmts (if any) with the tenants or copies thof will be produced at the sale & may be inspected at the office of the vendor's solors at any time within *one week* prevsly & the pchaser [*respive pchasers*] (whether takg advantage of such

6. *Condone as to commencement & evidence of title, abstract, &c., see SPECIAL CONDONS.*

7. THE vendors shl not be required to furnish any evidece of Identity, the identity of the psnt with any former description of the ppty [any lot] beyond what may be afforded by the munimts themselves, nor to reconcile differg descriptions [nor to distinguish the pts held under different titles].

8. *Custody of title deeds, &c., see SPECIAL CONDONS.*

9. ANY requons or objons arisg on the abstract, parlars or condons shl be sent in within — days after the delivery of the abstract orwise the same shl be considered as waived (in wch respt time shl be of the essce of the contract) & if the [any] pchaser shl insist on any objon or requon wch the vendors shl be unable or unwillg to satisfy the vendors may by notice in writg to the pchaser or his solor annul the sale on returng or tenderg the deposit witht intt, costs, or other paymt.

10. THE ppty is believed & shl be taken to be correctly described as to quantity & orwise; & any error, misstatemt, or omission in the parlars [or plan] shl not annul the sale, or be a ground for any abatemt or compenson on eir side.

11. If the [any] pchaser fail to comply with any of these condons, his deposit shl be absolutely forfeited, & the vendors shl be at liberty (witht being obliged to tender a convce) to resell the ppty [lot or lots sold to him], eir by public auction or private contract; & the deficiency (if any) arisg on such resale, & all expses attendg the same or any attempted resale, shl be made good & pd by the pchaser at the psnt sale as liquidated damages; & any increase of price on such resale shl belong to the vendors.

opportunity of inspon or not) shall be deemed to have full notice of the contents of all such docs (whether of a usual character or not) & of the terms of the sub-tenancies (notwg any partial or incomplete statemt of such contents or terms in the parlars or these condons or any inaccuracy in such statemt) [& of the state of the ppty as to repairs, insce, pty-walls, & all other mres] [in any case in wch the vendors have no counterpt of the lease “ or agrmt of tenancy or there is no written agrmt the pchaser shl be satisfied with such evidece of the terms of the tenancy as the vendors may be able to adduce.”]

MEMORANDUM (a).

Memorandum to be appended to conditions.

IT IS HEREBY AGREED betw Messrs. —, as agents for A. & B. the vendors, & — of —, that at the sale by auction this — day of — of the ppty descd in these parlars the sd — was the highest bidder for & has become the purchaser of the ppty [lot —] described in these parlars for the sum of £—, & that he has pd to the sd Messrs. — the sum of £— as a deposit & in pt paymt of the purchase-moy & that these parlars & condons shl be taken as the terms of agrmt for the sd sale & purchase: AS WITS our hands this — day of —, 18—.

Purchase moy, £—.

Deposit pd, £—.

Balce, £—.

Abstract to be sent to —.

Requirements of the Statute of Frauds.

(a) That the names of the vendors, or such a description as will sufficiently identify them, must appear on the contract, to satisfy the Statute of Frauds, see *Potter v. Duffield*, 18 Eq. 4, and the cases there cited. See also *Sale v. Lambert*, 18 Eq. 1; *Commings v. Scott*, 20 Eq. 11; *Beer v. London and Paris Hotel Company, Limited*, 20 Eq. 412; *Thomas v. Brown*, 1 Q. B. D. 714; *Rossiter v. Miller*, 5 Ch. D. 648; 3 App. Ca. 1124; *Catling v. King*, 5 Ch. D. 660; *Williams v. Jordan*, 6 Ch. D. 517; *Jarrett v. Hunter*, 34 Ch. D. 182; *Butcher v. Nash*, 61 L. T. 72. As to what is a sufficient reference to a plan, see *Nene Valley Drainage Commissioners v. Dunkley*, 4 Ch. D. 1; as to signature by the auctioneer or his clerk as the agent of purchaser, see *Sims v. Landray*, [1894] 2 Ch. 318. See also *Peirce v. Corfe*, L. R. 9 Q. B. 210.

That a vendor who is unable to make a title cannot compel a purchaser to take a title other than that which he contracted for, see *Re Bryant*, 44 Ch. D. 218; but where the defect admits of being cured by other parties joining merely by way of confirmation, the case is different; *Re Thompson*, 44 Ch. D. 492.

Stamp.

As to stamps on contracts for sale see the Stamp Act, 1891, 54 & 55 Vict. c. 39, s. 59; *post*, p. 317, note.

Variation for sale by private contract.

This memorandum may be adapted to a sale by private contract by omitting the references to the auction, and adding at the end, "so far as the same are applicable to a sale by private contract."

II.

GENERAL CONDITIONS on SALE by AUCTION of FREEHOLDS or COPYHOLDS or both. VARIATIONS for a Sale in Lots, and adapted to different circumstances.

1. *Biddgs*, see *Precedent I.*, p. 229 (b).
2. *Valuons of timber, fixtures, &c.*, if required, see SPECIAL CONDONS, pp. 248, 249.
3. *Deposit & Completion*, see *Precedent I.*, p. 230 (c).
4. THE rents & profits or posson will be reced or retained & the outgoing dischgd by the vendors up to the — day of — next, as from wch day all outgoing [add where the ppty

Possession
and
interest.

(b) As to the necessity for stating whether the sale is subject to a reserve price, see the Sale of Land by Auction Act, 1867, 30 & 31 Vict. c. 48; Dart, V. & P. 126; and as to reserving liberty to bid up to that price, see *Gilliat v. Gilliat*, 9 Eq. 60. The words "up to the reserve" are usually omitted, and there seems no reason for inserting them. The following is another form of part of this condition:

As to re-
serve price,
division of
lots, &c.

"The vendors reserve the right—*a.* To bid by themselves or an agent, & to refuse any bid; *b.* To alter the order of the lots, & to put up any lot or lots septely or togr in any combinon; *c.* To withdraw any lot from sale at any time bfe it has been knocked down witht declarg the reserve price."

Variation.

(c) The deposit, according to the well-settled rule, is held by the auctioneer as stakeholder for both parties; *Harington v. Hoggart*, 1 B. & Ad. 577; Dart, 205. The conditions sometimes, especially in the provinces, provide that it shall be paid to the vendor's solicitor or some other person authorised by him to receive it; in which case he will hold it as agent for the vendor and not as stakeholder, unless the latter is expressed (as is sometimes done); *Edgell v. Day*, L. R. 1 C. P. 80; *Ellis v. Goulton*, [1893] 1 Q. B. 350, in that case substitute for, "the auctioneer," "the vendors' solor [as stakeholder for both pties]." Fiduciary vendors may sell on the same terms as an ordinary vendor in this respect, and on a sale by a tenant for life under the Settled Land Act, 1882, there can be no objection to the deposit being paid to him or to the auctioneer, or any other person authorised to receive it, whether as stakeholder or not. Of course on completion it must be paid over to the trustees or other proper parties, whose acknowledgment for the payment of the whole purchase-money will be taken in the usual way. In the case of a company in liquidation the purchase-money and deposit may be made payable to "the liquidator of the vendors' Co." In the provinces it is very common for the vendors to exact from the purchaser a fee to the auctioneer and also one for the contract. That time is not of the essence of this contract, see *Hatten v. Russell*, 38 Ch. D. 334.

As to
deposit.

is in hand or the rates are not pd by the tenants, includg any rates made but not demanded till after that day] (a) shl be dischgd by & the rents & profits or posson shl belong to the pchaser, & the rents, profits & outgoings shl if neey be apportioned for the ppose of this provon ; but the pchaser shl not be let into the actual posson or rect of the rents & profits until the complon of the pchase, & the pchaser shl on complon pay to the vendors any arrears of rent & their proportion of the current rents, less their proportion of current outgoings. If from any cause whatever other than the wilful default of the vendors, the pchase [of any lot] shl not be completed on or bfe the — day of — next, the pchaser shl pay to the vendors intt (b) on the balce of the pchase-moy [& the amt of the afsd valuon], at the rate of — p.c. p.a. from that day until the complon of the pchase (c), & shl not be entled to any compen-son for the vendor's delay or orwise (d), but this stipulon is

Improve-
ment rates.

(a) As to improvement rates, &c., see *Midgley v. Coppock*, L. R., 4 Ex. D. 309; *Re Furtado*, 27 Sol. J. 466; *Re Bettsworth*, 37 Ch. D. 535; *Re Boor*, 40 Ch. D. 572; *Hornsey Local Board v. Monarch, &c., Soc.*, 23 Q. B. D. 149; 24 Q. B. D. 1. As to the recovery of expenses of this nature under the Public Health Act, 1875, see *R. v. Swindon, &c., Local Board*, 4 Q. B. D. 305. In the case of town properties, especially in new districts, it is sometimes desirable to insert an express condition as to this, see 22 Sol. J. 626, and form *infra*, p. 270. As to the right of the purchaser to rents without apportionment, see *Re Dawson*, 21 L. R. (Ir.) 441.

As to
interest on
purchase-
money.

(b) As to the payment of interest see Dart, V. & P. 708 *et seq.* It has been supposed on the authority of some recent cases (*Re Monckton*, 27 Ch. D. 555; *Re Golds*, 33 W. R. 333) that it is competent to the purchaser, although the vendor has not been guilty of wilful default, to escape from the condition by setting apart and depositing the unpaid purchase-money in a bank at interest, so as to restrict the vendor to the interest allowed on the deposit (see the discussion in Dart, 716 *et seq.*); but this doctrine has been repudiated, and the matter replaced on a more intelligible footing in *Re Riley*, 34 Ch. D. 386. For examples of wilful default see *Re Young and Harston*, 31 Ch. D. 168; *Re Wilson & Stevens*, [1894] 3 Ch. 546; *Re Strafford & Maples*, [1896] 1 Ch. 235.

Option to
vendors to
take rents
in lieu of
interest.

(c) The following is sometimes added here:—"Or the vendors shl have the option of takg the rents & profits (less outgoings) up to the actual day of complon in lieu of intt as afsd."

Compensa-
tion for
vendor's
delay, &c.

(d) As to the purchaser's right to compensation for the vendor's delay, or for the deterioration of the property, or any other loss through his default, see 16 Sol. J. 394; *Royal, &c., Society v. Romash*, 35 Ch. D. 390; *Rowe v. School Board for London*, 36 Ch. D. 619; *Re Wilson & Stevens' Contract*, [1894] 3 Ch. 546. Dart, 284, 733, 1083, note. It may be proper in some cases to protect the vendor in this respect by a more express condition.

* In re Words &
Lewis' Contract 1898
2 Ch 211

witht prejudice to the vendors' rts under any other of these condons.

[*Provon as to insurces, & as to ppty being at the risk of the pchaser, if pper, see pp. 269, 270.*]

5. THE ppty is sold (e) subjt to all chief quit & other rents & outgoings & to all [manorial rts, &] incidents of tenure, rts of way, water, lights, drainage & other easemts, if any, affectg the same (f) [& all rts of adjacent owners (g) & to any liability to repair or contribute to the repair of roads, ways, passages, bridges, sea-walls, dykes, sewers, drains, gutters, fences, & other like mres], & subjt also to the existg tenancies & all allowces to & claims for compenson & other rts of the tenants (h). The counterpts or copies of the leases or written agrmts (if any) with the tenants will be produced at the sale, & may be inspected at the office of the vendors' solor at any time prevsly, & the pchaser [respive pchasers] (whether availg himself [themselves] of such opportunity of inspection or not) shl be deemed to have full notice of the contents thof (notwg any partial or incomplete statemt of such contents or of the terms of the tenancies in the parlars, or these condons, or any inaccuracy in any such statemt (i) [& of the state of the ppty, as to repairs, insurce, pty walls, & all other mres]. [In any case in wch the vendors have no counterpt of the lease or agreemt of tenancy, or there is no written agrmt, the pchaser

Outgoings,
easements,
tenancies,
&c.

(e) The words "and will be conveyed" are sometimes inserted here, which would entitle the vendor to have the conveyance made expressly so subject (*Gale v. Squier*, 25 W. R. 226). This, however, could rarely be necessary for the vendor's protection, and, as it is calculated to hamper the purchaser's title, is scarcely fair to him.

(f) The words "or now or htofore used or enjoyed in respt of any ppty of the vendor not comprd in the psnt sale" are sometimes added here.

(g) Occasionally in town properties this may be made fuller by saying "owners of adjacent, superjacent, or subjacent ppty in respt of pty or other walls, fences, arches, archways, vaults, cellars, rights of support or any other mres."

(h) Add if necessary, "& the pchaser shl not require any rents or outgoings to be apportioned or call for any evidece not in the vendors' posson as to the origin or creation of any such outgoings easemts or rights as afsd."

(i) See *Cox v. Coventon*, 31 Beav. 378.

shl be satisfied with such evidece of the terms of the tenancy as the vendors may be able to adduce] (a).

6. *Condone as to commcemt & evidece of title, abstract, &c., see SPECIAL CONDONS.*

Recitals
evidence
(b).

7. EVERY deed & documt dated — yrs or upwards prior to the day of sale [& every pchase or mtge deed of whatever date] shl be conclusive evidece of everythg recited, stated, noticed, assumed or implied thrin [& of the contents & due exon of every deed or other documt recited, stated, or noticed thrin, & of wch neir the origl, nor an attested copy, nor a covt for prodon, is in the vendors' posson, & also that such

Easements
and restric-
tions
should be
stated.

(a) If the property is subject to any easements or restrictions prejudicially affecting its value, the existence of which is known, the general condition should not be relied on, but their nature should be stated in the particulars (see *Heywood v. Mallalieu*, 25 Ch. D. 357; *Nottingham, &c., Co. v. Butler*, 15 Q. B. D. 261; 16 Q. B. D. 778; *Hardman v. Child*, 28 Ch. D. 712; *Dart, V. & P.* 176; *Re Davis*, 40 Ch. D. 601; *Re Ebsworth*, 42 Ch. D. 28) even though their origin was anterior to the root of title (see *Re Cox*, [1891] 2 Ch. 109). And the insertion of general words implying the possible existence of restrictive covenants or other matters of serious importance where none such are known to exist should of course be avoided, especially on a sale by trustees (notwithstanding the Trustee Act, 1893, repealing, and by s. 4 re-enacting the Trustee Act, 1888, s. 3); see *Dunn v. Flood*, 25 Ch. D. 629, 28 Ch. D. 586.

Sale
subject to
mortgage
or annuity.

Occasionally the sale is subject to a mortgage (so as to be a sale of the equity of redemption) or to a rentcharge. In that case add, “& to a mtge for £—— & intt at —— p.c. p.a., payable hlf-yrly, or, ‘to an anny or rentchge of £—— p.a. chrged thron & payable durg the life of X.,’ wch sd ppal sum & the intt thron from the —— day of ——, or, ‘wch sd anny from the —— day of ——,’ shl be pd by the pchaser, & the vendors shl be indemnified thfrom by the pchaser's covt, to be contd in the convce, a duplicate whof shl be prepared & exted by the pchaser at his expse.” The expedient of selling subject to an annuity may be had recourse to where it cannot be released except by means of the Conv. Act, 1881, s. 5, or the Settled Land Act, 1882, s. 5.

As to freeing land sold from incumbrances, see the Conv. Act, 1881, s. 5; and as to settled estates the Settled Land Act, 1882, ss. 5, 24 (4, 5, 6).

As to reci-
tals being
evidence.

(b) This condition may in general be omitted in reliance on the statutory provision, unless it is extended to documents less than twenty years old, or, the last part in brackets is required; see p. 225. It should not without reason be extended to recent documents; and sometimes, especially where a document is of an *ex parte* nature (such as a disentailing deed, or a deed enlarging a long term) its nature ought to be stated.

recited, stated, or noticed deed or documt contd no other mre material to the title.]

8 (A). THE [Each] pchaser shl [notwg any discrepancies or varions in names, quantities, measuremts, boundaries, abuttals, contour or orwise] admit the identity of the ppty [lot] pchased [by him] with that comprd in the munimts upon the evidec afforded by a comparison of the descriptions in the parlars & munimts & plans thto (if any) [& a statutory declon to be made, if required, at the pchaser's expse, that the ppty [such lot] has been enjoyed, accdg to the title shown, for [20] yrs or upwards prior to the day of sale [or from the date from wch the title thto is to be deduced accdg to these condons *if more recent*]].

Identity
(c).

8 (B). THE vendors shl not be required to furnish any evidec of the identity of the psnt with any former descrip- tion of the ppty [any lot] beyond what may be afforded by the munimts themselves, nor to reconcile differg descriptions [nor to distinguish the freehd from the copyhd pt of the ppty, nor the pts held under different titles].

The same.
Another
form (c).

[9. THE expse of obtaing, attemptg to obtain, furnishg, abstractg, makg, verifyg, producg, inspectg, & examing all deeds, documts, statutory declons, certfes, evidec, & informon whatsr, not in the vendors' posson, & all copies of or extracts from deeds, wills, or other documts, whether in their posson or not, for whatever ppose the same resply shl be required, & of all searches, enquiries, & journeys for any of the above pposes shl be borne by the pchaser.]

Expenses
(d).

[10. No objon or requon shl be made on acct of the non- registron in the coy register of any deed, will, or other doct.]

Registra-
tion (e).

11. THE expse attendg the stampg of any unstamped or insufftly stamped docs exted bfe the 17th day of May, 1888 (if any such there be), shl be borne by the pchaser.

Stamping
(f).

12. On paymt of the balce of the pchase-moy the [each]

Convey-
ance.

(c) See other forms in SPECIAL CONDITIONS.

(d) This condition may, and now is in practice usually omitted in reliance on the statutory provision (see p. 226).

As to
expenses.

(e) As to registration it seems better to bar the right to require it (as it may not admit of being done), than merely to throw the expense on the purchaser; see *Girling v. Girling*, W. N. 1886, 18; 30 Sol. J. 238.

As to regis-
tration.

(f) As to stamping, see p. 227; as to the date, see the Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 117.

pchaser shl be entled to a pper assurse of the ppty [lot or lots pchased by him] from the vendors & all other necy pties, if any, such assurse [& every other instrumt & act wch shl be required by the [any] pchaser for gettg in or releasg any outstandg este, rt, or intt, or for completg the vendors' title, or for any other ppose (a)] to be prepared, made, & done by & at the expse of the pchaser [who shl also bear the expse of the perusal on behalf of & exon & acknowemt by all pties other than the vendors [& their mtgees] of every such assurse & instrumt] [& the engrossmt of every such assurse & instrumt shl be left not less than 10 days bfe the sd — day of — at the office afsd, for execon by the vendors & other conveyg pties, if any].

As to
covenants.
Trustees,
&c.

13. THE vendors being trees, *or*, "exors," *or*, "mtgees sellg under a power," *or as the case may be*, shl not be required to enter into any covt except the usual express or implied statutory covt that they resply have not incumbered [& the acknowemt as to munimts mentd in the — condon], & the concurrce of the psons beneficially interested [except any pson whose consent is necy to the sale], *or*, "of the mtgor," in the assurse of the ppty [any lot] (b) shl not be required. [Any

(a) See as to this, Dart, 176, 798; in a simple case the words in these two brackets may be omitted. The words in the subsequent bracket limiting a time for leaving the conveyance for execution are usually inserted, but are practically of little, if any, use.

As to
trustees
covenants
for title.

Concur-
rence of
benefici-
aries.

Covenants
by tenant
for life
consenting.

(b) The above exclusion of the liability of trustees, mortgagees, and other fiduciary vendors to enter into any covenants for title, except against their own incumbrances, as it expresses only what is the perfectly settled rule where the character in which they are selling is stated (see Dart, 146, 622), may be omitted, but it is very common to insert it. It is also, speaking generally, equally clear that on a sale by executors, or by trustees or mortgagees selling under a power, the concurrence of the beneficiaries or mortgagor cannot be required; but as in exceptional cases it may be otherwise (see Dart, 617), it is desirable to provide for this expressly; as should also be done where a tenant for life or other person joins to consent (see *Earl Poulett v. Hood*, 5 Eq. 115; *Re Sawyer*, 33 W. R. 26), either by providing (as above) that he shall only be required to covenant that he has not done anything to prejudice his power of consenting, or (in the case of a tenant for life) by restricting his covenants for title as if he were the vendor, as in the next variation, or by excluding altogether his liability to covenant. As to the covenants for title on a sale by husband and wife, see Dart, 620, and on a sale by joint tenants, *ib.* 624. As to acknowledgments for production of muniments, and as to trustees giving the undertaking for safe custody, see CONVEYANCES ON SALE.

person joining in the conveyance as a necessary consenting party shall not be required to enter into any covenant except that he has not done anything to prevent his so consenting.] [As the vendor is selling as tenant for life, or, "limited owner," under the powers of the S. L. A., 1882 (c), his covenants for title & further assurance, whether expressed or implied, shall as regards the reversion or remainder expectant on his [life] estate in the property be qualified so as to extend only to the acts of himself & persons claiming under him (d)].

Consenting party.

Tenant for life. Settled Land Act.

14. *Custody of title deeds & acknowledgment & undertakings as to production, &c., if required, see SPECIAL CONDITIONS, p. 299 et seq.*

[15. *Apportionment of rents, &c., if necessary, see SPECIAL CONDITIONS, p. 280.*]

16. WITHIN, *fourteen*, days after the delivery of the abstract (e) the [each] purchaser shall furnish to the solicitor of the vendors a statement in writing of his requisitions & objections arising on the abstract, particulars, & conditions [and within, *seven*, days after the delivery of the vendors' replies to the purchaser's requisitions & objections (if any), the purchaser shall furnish to the solicitor of the vendors a statement in writing of his further requisitions or objections (if any) arising on such replies] (f); & every requisition or objection not so stated shall be considered as waived, & for the purpose of any objection or requisition an abstract shall be deemed perfect if it supply

Requisitions.

(c) On a sale by a tenant for life or other limited owner under the Settled Land Acts, it should be seen that the proper statutory notices of the intended sale are given to the trustees and their solicitors at least a month previously, under s. 45 of the Act of 1882; or else that the notices are waived under the Act of 1884, s. 5; and that trustees for the purposes of the Acts are properly constituted to receive or waive the notices; see as to this, and generally the note on the Act, *infra*, CONVEYANCES ON SALE.

Notices under Settled Land Acts.

(d) This qualification of the covenants of a tenant for life is now sanctioned by general practice (see Dart, 619), and would probably be held proper under an open contract.

Covenants of tenant for life.

(e) *I.e.*, a complete abstract, meaning thereby as complete an abstract as the vendor can from the documents in his actual or constructive possession supply; *Hobson v. Bell*, 2 Beav. 17; *Morley v. Cook*, 2 Ha. 111; *Steer v. Crowley*, 14 C. B. at p. 359. The condition does not apply to an objection which goes to the root of the title, *Re Tanqueray-Willaume*, 20 Ch. D. at 474. The conditions sometimes limit a time for delivery of the abstract; but this is objectionable, though it may be stipulated for on a sale by private contract. As to the right of the purchaser to rescind on non-delivery of an abstract within a reasonable time, see *Compton v. Bagley*, [1892] 1 Ch. 313.

Delivery of abstract.

(f) The addition in brackets is sometimes inserted, and may be useful to prevent delay.

the informon suggestg the same although orwise defective; & if no requon or objon is so stated, the title shl be considered as accepted (a); & in these respts time shl be deemed of the essce of the contract; & if the [any] pchaser shl make & insist on any objon or requon, eir as to title, convce, or any mre appearg on the parlars (b), condons or abstract, or orwise, wch the vendors shl be unable or [on the ground of difficulty, delay, or expse, or on any other reasble ground] (c) unwillg to remove or comply with, the vendors shl, notwg any prevs negotiation or litigon (d), be at liberty on givg to the pchaser not less than ten days' notice in writg to annul the sale, in wch

(a) See *Want v. Stallibrass*, L. R. 8 Ex. 175; *Re Tanqueray-Willlaume & Landau*, 20 Ch. D. 465.

(b) As to these words, see *Re Terry*, 32 Ch. D. 14. A defect of title would be within this rescission clause, although falling within the clause giving the purchaser a right to compensation: *Ashburner v. Sewell*, [1891] 3 Ch. 405.

As to
rescission
clause.

(c) The rescission clause is now practically universal on sales by auction, and is very commonly insisted on by vendors on sales by private contract; but its proper form is somewhat doubtful. Notwithstanding what was said in *Hardman v. Child*, 28 Ch. D. 712, it is the practice to extend it to requisitions as to conveyance as well as title. Without the above qualification in brackets it gives a power which may be used by an unscrupulous vendor unfairly as a means of escaping from the contract in order to accept a better offer (see 22 Sol. J. 626), but see *Smith v. Wallace*, [1895] 1 Ch. 385; on the other hand, the words in brackets may expose the vendor to a controversy. It has been held that a vendor with no title, or a radically bad one, cannot avail himself of such a condition (*Nelthorpe v. Holgate*, 1 Coll. 203; *Bowman v. Hyland*, 8 Ch. D. 588); but the present tendency seems to be to restrict this to cases where the defect was known to the vendor at the time of the sale, and is such that the attempt to sell under such a condition is dishonest (see *Heppenstall v. Hose*, 33 W. R. 30). A serious defect of title should of course be the subject of a special condition. If the right to rescind is reserved, in case the purchaser makes and insists on the requisition, the vendor cannot rescind without first answering it (*Turpin v. Chambers*, 29 Beav. 104; *Duddell v. Simpson*, 2 Ch. 102); but where the words "and insist on" are absent, the vendor may rescind summarily on the making of the requisition; see *Re Glenton*, 53 L. T. 434; *Re Starr Bowkett, &c.*, 42 Ch. D. 375, and remarks thereon, 33 Sol. J. 434; *Woolcott v. Peggis*, 15 App. Ca. 42. The condition should give the purchaser, as above, a reasonable opportunity of withdrawing the requisition (see *Re Dames*, 27 Ch. D. 172; 29 Ch. D. 626; Dart, 183).

(d) In *Re Arbib*, [1891] 1 Ch. 601, it was held that after an objection taken by the purchaser had been decided by the Court in his favour, it was too late for the vendors to rescind under a clause in the above form, so as to escape payment of the purchaser's costs. It does not seem desirable to extend the clause to meet such a case.

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2 ch 285

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case, unless the objection or requisition shall have been in the meantime withdrawn, the sale shall, at the expiration of the notice, be annulled, the purchaser being in that event entitled to a return of the deposit, but without interest, costs, or compensation (e).

17 (A). If any error, misstatement, or omission should be discovered in the particulars [or plan], the same shall not annul the sale, but a reasonable abatement or compensation in respect thereof [except as to the quantities, which are believed, & shall be taken to be correct], shall be allowed or paid by the vendors or purchaser, as the case may be, regard being had to the amount of the purchase-money, provided the same shall be demanded in writing, prior to [the time hereby fixed for] completion of the purchase [for which purpose time shall be deemed to be of the essence of the contract] (g), the amount to be fixed by the auctioneer, or, "by two referees; one to be appointed by each party, or their umpire, pursuant to the Arbitration Act, 1889," whose decision shall be final.

Compensation for misdescription (f).

(e) If there is no deposit, say, "& the vendor shall not be liable to pay to the purchaser any costs or compensation." The following is sometimes added, "& thereupon the contract & abstract & all documents delivered by either party to the other shall be returned."

Variation where no deposit.

(f) As to this condition, see Dart, V. & P. 150 *et seq.* It has been said (Dart, p. 158), on the authority of *White v. Cuddon*, 8 Cl. & Fin. 766, that trustees are not justified in allowing compensation for their own errors; but that case hardly supports the proposition in so broad a form, and the judgments in *Dunn v. Flood*, 28 Ch. D. 591 *et seq.*, seem to show that it may in some cases even be necessary to insert it; the general practice is believed to be to insert such a condition without regard to the question whether the vendors are trustees or not, and there seems no reason against using it if convenient. The point is not affected by the Trustee Act, 1893, repealing, and by s. 14 re-enacting, the Trustee Act, 1888, s. 3, as that applies only to depreciatory conditions, which this is not (*Hobson v. Bell*, 2 Beav. 17). There is, of course, no objection, especially since the Act just mentioned, to the use of the condition 17 (c) excluding compensation, which is now more usual. For another form of condition as to compensation, see p. 283. As to what misdescriptions are covered by such a condition, see *Re Terry*, 32 Ch. D. 14; *Re Fawcett*, 42 Ch. D. 150; *Re Aspinalls*, 60 L. T. 595. As to the measure of compensation, see *Re Chiffertel*, 40 Ch. D. 45. As to the position of a mortgagee vendor who allows compensation for an error of description, see *Tomlin v. Luce*, 41 Ch. D. 578, varied 43 Ch. D. 191.

As to compensation for errors where vendors trustees.

(g) It is now settled, after some conflict of authority, that in the absence of these words the purchaser could obtain compensation after completion; Dart, 904; *Palmer v. Johnson*, 13 Q. B. D. 351; and see *Clayton v. Leech*, 41 Ch. D. 103.

The same. 17 (B). If any error or omission shl be found in the parlars,
Short form. the same shl not annul the sale, but a reasble compenson (if
demanded in writg bfe complon) shl be allowed or pd by the
vendors or pchaser, as the case may be, to be settled by two
referees, or their umpire, in the usual way.

The same, 17 (c). THE ppty is believed, & shl be taken to be correctly
excluding the right described as to quantity & orwise ; & any error, misstatemt,
to compen- or omission in the parlars [or plan] shl not annul the sale, or
sation (a). be a ground for any abatemt or compenson on eir side.

Non-com- 18. If the [any] pchaser fail to comply with any of these
pliance condons, his deposit shl be absolutely forfeited, & the vendors
with con- shl be at liberty (witht being obliged to tender a convce) to
ditions (b). resell the ppty [lot or lots sold to him], eir by public auction
or private contract ; & the deficiency (if any) arisg on such
resale, & all expses attendg the same or any attempted resale,
shl be made good & pd by the pchaser at the psnt sale as
liquidated damages ; & any increase of price on such resale
shl belong to the vendors.

MEMORANDUM (c).

Mem, p. 232.

III.

GENERAL CONDITIONS on SALE by AUCTION of LEASEHOLDS. VARIATIONS for a Sale in LOTS, and adapted to different circumstances (d).

1. *As to biddgs, &c.*, p. 229.
2. *Valuon of fixtures, &c.* See SPECIAL CONDONS, I., III.
3. *Deposit & complon*, p. 230.
4. *Posson & intt*, p. 233.

(a) See as to this, *Dart*, 731 *et seq.* ; *Re Terry*, 32 Ch. D. 14 ; *Re Beyfus*, 39 Ch. D. 110.

(b) See *Esses v. Daniell*, L. R. 10 C. P. 538 ; *Howe v. Smith*, 27 Ch. D. 89 ; *Soper v. Arnold*, 35 Ch. D. 384 ; 37 Ch. D. 96 ; 14 App. Cas. 429.

(c) See note, p. 232.

(d) See the notes to the last Precedent, and the Preliminary note, p. 224, and see also SPECIAL CONDITIONS, III.

5. THE ppty [each lot] is sold subjt to the rents, covts, & condons of the lease [or underlease] by wch the same is held as stated in the parlars, & subjt also to all rights of way, water, drainage, light, & other easemts, if any, affectg the same, & to the underleases or agrmts with the sub-tenants or occupiers. Easements,
tenancies,
&c.

6. *Purchaser to have notice of contents of lease, &c. (e), see p. 230.*

7. THE title to the ppty [each lot] shl commce with the lease [or underlease] under wch the same is held as stated in the parlars & the pchaser shl not call for the prodon of or make any objon or requon resptg the lessors or prevs title although the same may be recited or refd to, or he may orwise have notice thof but shall assume that such lease was well granted [and that any lease purportg to be grted in exercise of a power was in conformity with such power] (f). Title.

[8. *As to recitals being evidce, p. 236.*]

9. *Identity, p. 237.*

10. THE rect for the last rent accrued due prevsly to the complon of the pchase in respt of the ppty [each lot] shl be accepted as conclusive evidce of the pformce of all the covts & condons in the lease [or underlease] under wch the same is held [&, in the case of an underlease, of the paymt of all rent accrued due under, & the pformce or observe of all the covts & condons contd in, the superior lease], or of the effectual waiver of any breach of any covt or condon up to the complon of the pchase. Evidence of
perform-
ance of
covenants
(g).

[11. *Expsses, p. 237.*]

[12. *Registron & stampg, p. 237.*]

13. *Convce & covts, pp. 237, 238.*

14. THE pchaser [of each lot] shl covt to indemnify the vendors [& the este of their testor] agst the rents & covts of Indemnity
to vendors
against
rent, &c.
(h).

(e) See *Reeve v. Berridge*, 20 Q. B. D. 523; *Re Davis & Cavey*, 40 Ch. D. 601; *Coz v. Coventon*, 31 Beav. 378. *Midgler v. Smith*, 1893, W. N. 120. Care should be taken not to misdescribe an underlease as a lease; see *Re Beyfus*, 39 Ch. D. 110.

(f) As to the omission of this and the next condition under the V. & P. Act, 1874, s. 2 (2), and the Conv. Act, 1881, s. 3 (1, 4, 5), see above, p. 224. For other forms, see SPECIAL CONDITIONS, II.

(g) As to the omission of this condition under the Conv. Act, 1881, s. 3 (4, 5), see above, p. 236. For other forms, see SPECIAL CONDITIONS, III.

(h) The indemnity may be required although the vendor is only an assignee of the lease, as he or his testator may have entered into a similar As to
indemnity

the lease [under wch the same is held], & shl for that ppose, if required, exte & deliver to the vendors a duplicate of the assnmt to be prepared & stamped by & at the expse of the pchaser (a).

15. *Custody of title deeds & acknmt as to prodon, &c., if required, see SPECIAL CONDONS, XII.*

[16. *Apportionmt of rents, &c., if necy, see SPECIAL CONDONS, VIII.*]

17. *Time for deliverg requons, &c., p. 239.*

18. *Compenson for misdescription, pp. 241, 242.*

19. *Non-compliance with condons, p. 242.*

Form of mem of contract, p. 232.

IV.

FURNITURE (b).

1. *Biddg, p. 229.*

Deposit.

2. THE pchasers are when required to pay down immedly a deposit of 5s. in the pound, or such other sum as the auctioneer may name in pt paymt, each deposit to be applicable to any or all lots pchased, & to give their names & addresses when required, in default of wch the lot or lots so pchased to be at the disposal of the auctioneer.

Removal.

3. No lot to be removed durg the progress of or on the days of sale. The lots to be taken away with all faults, imperfons & errors of every description at the pchaser's expse & risk, on the two days follg the last day's sale & the remr of the pchase-moy to be pd bfe delivery, the auctioneers not being respon-

Comple-
tion.

against
rent, &c.

covenant, and as it has been held that he remains liable to the lessor under the Apportionment Act, 1870, for an apportioned part of the current rent which becomes due after completion : *Swansea Bank v. Thomas*, 4 Ex. D. 94, a questionable decision. The provision may be omitted, as the purchaser is bound to give the covenant : *Dart*, V. & P. 629.

(a) It is believed to be now usual to throw the expense of a duplicate of the conveyance (which is inconsiderable) on the purchaser.

(b) No memorandum is required, as the contract becomes enforceable by the payment of the deposit (Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 4). An auctioneer's memorandum of contract of sale of moveable chattels is a bill of sale within the Act of 1878, if no part of the purchase-money is paid, no earnest given, and no part of the goods is accepted and received by the purchaser, see the Sale of Goods Act, 1893 (*supra*) : *Re Roberts*, 36 Ch. D. 196.

sible for the correct description, genuineness or authenticity of or any default or defect in any lot; & make no warranty (c) whatever. In cases where one buyer purchases more than one lot the whole of the acct of the lots purchased is to be paid before any lot be delivered, & no allowance whatever will be made for error in description or quantity, but the lots are to be cleared as shown at the sale. If from any cause the auctioneers shall be unable to deliver a lot, the deposit-money (if any) shall be returned to the purchaser without any compensation in respect of such non-delivery.

4. ALL lots left after the time specified will be liable to any expenses that may arise from their not having been cleared in accordance with the 3rd condition.

5. THE purchasers to be answerable for all damage they may do to any lot or lots or to the premises in taking down or removing their respective lots.

6. UPON failure of complying with the above conditions the money deposited shall be forfeited; the lots uncleared within the time aforesaid shall be resold either by public auction or private contract & the deficiency (if any) at such second sale together with all charges attending the same, shall be made good by the defaulter or defaulters at this present sale & be recoverable as & for liquidated damages, but any surplus that may arise therefrom shall belong solely to the vendor. Non-compliance.

7. THE auctioneer reserves the right of altering the arrangement of the lots by selling two or more lots as one lot or in any other way he may think proper; also of withdrawing any lot or lots & of altering these conditions at the time of sale. Reservations.

8. No cheques taken.

9. THE auctioneer to be the sole arbitrator in every matter of dispute.

V.

UNDERWOODS.

1. No person to advance less than 5s. per acre at each bidding nor retract a bidding. The highest bidder to be the purchaser, & Biddings.

(c) As to warranty, see Goodeve, P. P. 66.

shd any dispute arise as to the biddgs, the lot shl be put up again at the last previous biddg. There will be a reserve on each lot.

Deposit and
security.

II. EACH pchaser shl immedly pay down a deposit of 10 p.c. on his pchase-moy, & sign an agreemt in the form sub-joined, & within 3 days from the day of sale give a bond, with such one or more sureties as shl be required & be approved of by the agent of the vendors, for the due paymt of the balce of his pchase-moy at 10 months from the day of sale.

Boundary
fences.

III. THE lots will be sold by the acre, & where any lot abuts on a boundary fence the vendors' workmen will at once pceed to make such fence, using any materials required from such lot.

Purchaser
to give
security.

IV. No pchaser will be allowed to commce cuttg any wood until the vendors' agent is fully satisfied with the proposed secy, & at any time aftwds the vendors may call for further approved secy, & give notice thof to any pchaser by a notice left at his last known place of abode, & he shl give the required secy within 6 days from the date of such notice, durg wch time no pt of the lot shl be cut, sold, or removed; & if after the lapse of such 6 days the pchaser refuses or neglects to give the required secy, his lot or lots shl revert to the vendors, with all the labour bestowed thron, & the vendors shl be at full liberty to cut the remr & sell & dispose of the same, & also any wood cut but not removed by the pchaser, eir by private sale or public auction, & if any deficiency shl be found the pchaser shl still be liable to make it good.

Cutting.

V. THE wood shl be cut in a pper, customary, & workman-like mner.

Certain
wood not
to be cut.

VI. THE pchaser shl leave standg all young standard oaks or other tellers, & leave uncut all the firs now standing in any of the woods, doing as little damage as possible in cuttg & clearg the woods.

Cattle to be
muzzled.

VII. ALL horses, oxen, or other cattle brought into the woods to be muzzled. If any horse or other beast be found in the woods after the 1st of April witht a muzzle, the pchaser on whose lot it shl be found shl pay 10s. for each head to the vendors as liquidated damages.

Not to lop
timber.

VIII. THE pchaser not to cut, lop, or orwise damage the

timber, trees, tellers, or saplgs, & to make satisfon to the vendors for all loss or damage they may sustain by the carelessness or negligce of his workmen or servants employed in the wood, & no pson to have any authority to permit or order any description of tree or wood to be cut but what is clearly included in the sale & strictly underwood.

ix. THE wood to be all cut from the stubbs bfe the 1st of April, & to be cleared from the woods on or bfe the 1st of May next, or it will be forfeited to the vendors. Work to be finished by certain date.

x. No dogs to be allowed to go into the woods except by leave of the vendors. Dogs.

xi. If any pchaser shl neglect or refuse to comply with any of the above condons the deposit-moy & the wood uncleared shl be forfeited, the lot or lots resold by public or private sale, & the deficiency (if any) on such second sale, togr with all expses attendg the same, shl be made good by the defaulter at the psnt sale & be recoverable as liquidated damages. Neglect to comply with conditions.

IT IS HBY AGRD betn Messrs. —, *the Auctioneers*, as agents for A. & B. (a), the vendors, & — of —, that at the sale this day of the underwood belongg to the vendors the sd — pchased the follg lot at the price below mentd, subjt to the above-printed condons, & that he has pd the sum of £— as a deposit & in pt paymt of the pchase-moy to the sd Messrs. — Memorandum of contract.

Lot — at — pounds — shillgs — pence per acre.
As wrts our hands this — day of —.

(a) See p. 232, note, *Scorell v. Bozall*, 1 Y. & J. 396.

SPECIAL CONDITIONS.

I.

VALUATIONS of TIMBER, FIXTURES, &c. (a).

Timber (b). 1. THE timber & timber-like trees, down to the value of one shillg per stick, pollards, tellers, & underwood down to the stub [& the growg crops] shl be pd for by the pchaser at a valuon to be made at the jt expse of the vendors & pchaser by the auctioneer (c), or failg such valuon, at their fair value: AND the price thof shl for all the pposes of these condons (except as to paymt of deposit) be deemed to be pt of the pchase-moy [but as regards the copyhd pt of the ppty such intt only as the vendors have in the timber is included in the sale].

As to valuations. (a) See as to sales by valuation, Dart, V. & P. 257. A mere appraise-ment by valuers was held not to be an arbitration within the meaning of the Common Law Procedure Act, 1854 (*Re Dawdy*, 15 Q. B. D. 426; *Re Carus Wilson*, 18 Q. B. D. 7; Dart, p. 260); and this would seem to be so also under the Arbitration Act, 1889 (52 & 53 Vict. c. 49).

As to sales of timber. (b) As to the sale of timber separately from the land and the rights of a tenant for life, see *Cockerell v. Cholmeley*, 3 Russ. 565; 1 Russ. & M. 418; 6 Bligh, N. S. 120; 1 Cl. & F. 60; *Doran v. Wiltshire*, 3 Sw. 699; *Re Llewellyn*, 37 Ch. D. 317; Dav. Prec., Vol. III., 295.

(c) Or, "By 2 psons, one to be named by the vendors, & the other by the pchaser, or by an umpire to be named by the valuers bfe pcdg to the valuon, but if eir the vendors or pchaser refuse or neglect to name a valuer, or to notify the same in writg to the other pty within 10 days after being reqted by such pty so to do, or if eir of the valuers shd refuse or neglect to act for 10 days after notice in writg from the other valuer callg upon him so to do, then the valuon shl be made by the valuer (if duly notified as afsd) of the other pty alone."

II. THE timber & other trees on each lot shl be pd for by the pchaser in addon to the amt of his biddg at the price named in the parlars, psuant to a valuon made prevsly to the sale by Mr. —, & the amt of such valuon shl for all the pposes of these condons (includg paymt of the deposit) be deemed pt of the pchase-moy.

The same.
Another
form.

III. THE shop & [tenant's] fixtures, fittgs, & furniture in or upon the ppty [any lot] shl be pd for by the pchaser at a valuon to be made, &c., *as above*, No. 1., *addg in the case of leasehds*, “& the decision of the auctioneer, *or*, ‘valuers or umpire,’ as to what are tenant’s fixtures or fittgs shl be conclusive.”

Fixtures
and furni-
ture.

IV. THE pchaser shl take & pay for at a fair valuon to be made by 2 referees, to be named one by the vendors & the other by the pchaser, or by an umpire to be named by such referees bfe beginng the valuon, the [crops &] stk (live & dead), & the hay or other fodder, straw & manure, & the tillages & acts of husbdry, *or*, “the ploughgs, seeds, & sowgs, labour on manures & work done on the land after harvest, & the labour on the fallows,” & other tenant’s ppty usually taken by an incomg farm tenant from an outgoing one, such valuon to be made on the basis of the custom of the country prevsly to the complon of the pchase, from wch time the same resply shl be at the risk of the pchaser, & he shl be entled (on paymt of the balce of the pchase-moy & the amt of such valuon) to enter into occupon: [But the vendors shl be entled to the use of the barns, granary, & yards, until the 1st day of May next, for the ppose of housg, thrashg, & marketg the psnt yr’s crops.]

Crops,
farming
stock,
tillages,
&c., when
farm sold
as going
concern(d).

V. UNLESS an arrangemt shl be made for givg the pchaser the control of the game preservg pendg the complon of the pchase, the vendors will continue to preserve as if they were going to continue the enjoymt of the este, & the pchaser shl on complon pay to them the sum of £—— for the expses thof.

Game pre-
serving.

VI. THE pchaser shl take at a fair valuon, to be made by two appraisers (one to be appted by the vendors, & the other

Public-
house valu-
ations.

(d) See p, 244, note (b). As to the sum payable on a farm valuation by an incoming tenant being subject to rent due to the landlord, see *Stafford v. Gardner*, L. R. 7 C. P. 242.

by the purchaser), or their umpire to be chosen in the usual manner, all the furniture, tenant's fixtures, fittings, & effects on the premises (other than the stock-in-trade, & such things as the vendors may desire to remove), & the decision of the appraisers or umpire as to what are tenant's fixtures & fittings shall be conclusive. The purchaser shall also take such of the stock-in-trade upon the premises as shall not have been sold or disposed of at the time of the completion of the purchase according to the valuation of two gaugers, one to be appointed by the vendors, & the other by the purchaser, or their umpire to be chosen in the usual manner, & the amount of the respective valuations, & a proportion for the time unexpired of the licences & fire insurances appertaining to the premises & to the effects therein, & of all outgoing, shall be paid by the purchaser at the time of the completion of the purchase, & if the purchaser shall neglect or refuse to appoint an appraiser for 8 days after being required so to do, or to appoint a gauger on request, or if the appraiser or gauger appointed by the purchaser shall neglect or refuse to nominate an umpire on request or to proceed in the valuation, the appraiser or gauger appointed by the vendors shall make the valuation alone, & the same shall be binding on the purchaser.

The same.
Another
form.

VII. THE purchaser shall on completion of the purchase pay for & in respect of the licences & insurances subsisting at the time of completion a sum proportionate to the time unexpired therein, & the vendors will, at the expense of the purchaser, do all such acts for transferring the licences & insurances to the purchaser or his nominee as are usual in like cases, & in the event of the licences or insurances having expired will, if required by & at the expense of the purchaser, apply for & endeavour to obtain a renewal thereof respectively to him or his nominee, but the completion of the purchase shall not be thereby delayed (a).

(a) See *Cowles v. Gale*, L. R., 7 Ch. 12.

II.

As to COMMENCEMENT and DEDUCTION of TITLE.

I. THE title sh^l commce with a convce on sale, dated, &c. [& the pchaser sh^l not require the prodon of or investigate or make any requon or objon in respt of the prior title, whether the same sh^l appear to be in the vendor's posson or power, or not.]

Title com-
mencing
with a con-
veyance
(b).

II. THE title sh^l commce with the will of a testor, who died in 18—, & no proof sh^l be required of the testor's seisin or ownership, [or, The title sh^l commce with a genl devise of real este made by the will of a testor, &c., & the pchaser sh^l assume the seisin or ownerhip of the testor, & that the ppty passed by the devise]. [*Earlier title not to be called for, see No. I.*]

Title com-
mencing
with a will.

III. THE title sh^l commce as to the greater pt of the ppty with a pchase deed in 18—, & as to the remr of the ppty (being the copyhd pt), with an admittce in 18— [or, The title to the ppty sh^l commce as follows, (namely), as to the great bulk thof [lots —] with a pchase deed in 18—; as to the portions coloured — in the annexed plan [lots —] with a deed of mtge, or, parton, or, settlemt in 18— (except as to a small piece contg about — perches, to wch no earlier title will be shown than a convce in 18—); as to certn portions contg about — acres, wch cannot now be identified or dis-

Title com-
mencing
with sever-
al instru-
ments.

(b) As to this condition, see the Conv. Act, 1881, s. 3 (3), above, p. 224. It is in all cases desirable to state the nature of the deed made the root of title, and in some cases (as where the deed is voluntary), it is necessary to do so; *Re Marsh*, 24 Ch. D. 11, but see *Noyes v. Paterson*, [1894] 3 Ch. 267. It should be borne in mind that trustees may be deterred from bidding where too short a title is offered, although if it should appear that it is a good holding title they might be protected by the Trustee Act, 1893, re-pealing, and by s. 8 (3) re-enacting the Trustee Act, 1888, s. 4, sub-s. (3).

As to
restricting
length of
title.

A risk to which a purchaser accepting less than a 40 years' title may sometimes be exposed is that of being fixed with constructive notice of some matter (such as a restrictive covenant) not disclosed by the latter deeds, which he would have discovered had he not contracted himself out of the right to investigate the earlier title; see *Patman v. Harland*, 17 Ch. D. 353; *Nottingham, &c., Brick Co. v. Butler*, 16 Q. B. D. 778; *Re Cox*, [1891] 2 Ch. 109. Where the purchaser is precluded from making an objection to the title, and he can show that it is bad, specific performance will not be decreed against him; but the parties will be left to their remedies at law: *Re Scott & Alvarez*, [1895] 2 Ch. 603.

Construc-
tive notice.

tinguished, but wch are included in that pt of the ppty wch is coloured — in the plan [lot —], with the will of a testor who died in 18—, & whose seisin or ownership shl be assumed], & in every case the respive assurces or docts, with wch it is above stipulated that the title to the respive pts of the ppty [lots] shl commence, shl be accepted as good roots of title, & the prior title shl not be required, enquired into, or objected to, whether the same shl appear or be in the vendors' posson or power or not, & no requon or objon shl be made resptg anythg contd or appearg in any of the docts with wch the respive titles commence.

Option to purchaser to call for earlier title at his own expense.

iv. THE title shl commence with, &c. : But as this restron is only made to prevent expse to the vendors, the pchaser will be at liberty to have the earlier title, commencg with, &c., abstracted & deduced at his own expse provd he shl require the same, by a written notice to the vendors or their solor, within — days after the delivery of the abstract of the later title.

Inspection of earlier title before sale.

v. THE title shl commence with, &c. The earlier title deeds in the posson of the vendors & an abstract thof may be inspected at any time bfe the sale at the office of the vendors' solor, but no investigon into, or objon or requon in respt of the prior title shl be made subseqtly to the sale.

Proof of title to be partially dispensed with on the ground of a recent investigation.

vi. IN the yr —, certn ppty held under the same title as that now offered for sale was sold by the vendors to — for a sum exceedg £—, upon wch occasion the title was approved after a full investigon [*or*, The ppty was formerly pt of the “— este,” & was pchased by the late owner, under whom the vendors claim, in the yr —, on wch occasion the title was fully investigated], of wch fact a statutory declon, to be furnished, if required, at the expse of the pchaser, shl be sufft evidece (a). It is accdly stipulated, in order to save the unnecy trouble & expse of anor investigon of the title prior to the yr —, that the pchaser shl be content with an abstract commencg with, &c., & shl not call for or investigate or 'make any requon or objon resptg the earlier title, [*add, if thought fit, an offer givg the pchaser the rt of callg for the earlier title at his own expse or inspectg it bfe the sale, as above, Nos. iv. & v.*].

(a) See *Symons v. James*, 1 Y. & C. C. C. 487.

VII. As the ppty forms pt of large family estates, & an abstract of the whole title is necessarily voluminous, it is stipulated that with respt to any lot wch shl fetch less than £——, the pchaser shl be satisfied with a convce from the vendors, witht requirg any title or evidece of title whatever to be shown, *or*, “shl only be entled to an abstract commencg with the settlemt, dated in the yr ——, under a power of sale contd in wch the psnt sale is made, & wch contains recitals of the earlier title, & shl not be entled to make any requon or objon resptg such earlier title,” *or*, “in the case of lots fetchg less than £——, the abstracts will be short summaries of the title only, but the pchasers may have fuller abstracts at their own expse.”

Title to small lots forming part of family estates (b).

VIII. As to certn small portions of the ppty, comprisg togr about —— acres, [wch were pchased by the psnt vendors at various times betn the yrs —— & ——,] the pchaser shl be content with such title as the vendors have [accepted on such respive pchases].

Purchaser to take such title as vendors have.

IX. THE abstract shl commce with a deed of convce, dated, &c., wch deduces the title to the ppty by recital from the yr ——, & the pchaser shl be satisfied in all respts with such recital of the prior title & shl not require any evidece or informon as to anythg recited, disclosed, or refd to in such convce or orwise in relon to such prior title.

Recent commencement, prior title deduced by recital.

X. AN abstract of the title, commencg as above provd, may be perused & examined with the deeds 10 days bfe or at any time after the sale, at the office of the vendors' solor, but to save expse to the vendor it is stipulated that no pchaser shl be entled to a copy of the abstract, except on paymt of 2 guineas for the same, & unless he applies for it within 1 week of the sale.

Restriction as to abstract on sale in small lots.

XI. ANY pchaser who shall be willg to forego the investigon of the title & to accept a convce (prepared by the vendors' solors) of his lot or lots, & shl apply to them for such convce within 7 days of the sale, may have the same free of all expses except the paymt of the stamp duty & of —— guineas for the expses connected thwith, but if such notice is not given within the sd 7 days the pchase must be completed in the

Option to purchasers to have free conveyances.

(b) See Dart, V. & P. 167.

usual way, & every purchaser who shall elect to accept such conveyance as to any lot must make the same election as to every other lot purchased by him, & the vendors will not give such free conveyance in any case in which they have been put to any expense either as to title or conveyance other than the charges of their own solicitors for the preparation & execution of such conveyance. A copy of the form of conveyance will be produced at the sale, & may be inspected afterwards at the office of the vendors' solicitors.

Enfranchised
copyholds
(a).

xii. As to part of the property which was formerly copyhold, held of the manor of —, & was enfranchised in the year —, the purchaser shall take subject to the reservations & matters contained in the deed [award] of enfranchisement [& to the rights of the lord of the manor in respect of minerals or otherwise].

Exchange
(b).

xiii. As to any parts of the premises which have been derived under exchanges the vendors shall not be required to produce any evidence of the title of the persons from whom the same were taken in exchange anterior to the deed or deeds by which such exchanges were effected, nor to deduce the title to the lands given in exchange, but such exchanges shall be assumed to have been in all respects valid.

The same.

xiv. An agreement for exchange in 18— does not appear to have been carried out by actual conveyance, but as the land taken in exchange has been since held in accordance with the terms of the agreement (of which fact a statutory declaration will be furnished if required at the purchaser's expense), the purchaser shall not require a conveyance thereof to be obtained, or make any objection or requisition with reference to such exchange.

Allotment
under Inclosure
Award (c).

xv. The title to part of lot — shall commence with an award, dated, &c., under an Inclosure Act, & the purchaser shall assume the validity & regularity of the award, & shall not call for the title to the lands in respect of [or in exchange for] which the allotment was made, but shall assume that the allottee became seised in fee simple of the land allotted, subject only to the reservations & matters contained in the award [and to the rights of the lord of the manor in respect of minerals or otherwise].

(a) See *Bellamy v. Debenham*, [1891] 1 Ch. 412. As to the lord's title, see above, p. 225.

(b) See *infra*, EXCHANGES; and 1 Dart, V. & P. 326 *et seq.*

(c) As to this and the next form, see 1 Dart, V. & P. 186, 326 *et seq.*; *Jacomb v. Turner*, [1892] 1 Q. B. 47.

xvi. As to certn allotmts, the title to wch is derived under an award made in the yr — under the — Inclosure Act, the pchaser shl assume the validity & regularity of the award, & that the allotmts were made in respt of [or in exchge for] pt of the lands comprd in a settlemnt dated, &c., & so as to follow the title to such lands (*d*).

The same.

xvii. THE title shl consist of the will of a testor who died in 18—, contg a genl devise to the father of the psnt vendor, & a statutory declon that since 18— (in wch yr his father died intestate, leavg the vendor his hr) the vendor has been in the undisputed posson & enjoymt or rect of the rents of the ppty. The pchaser shl be satisfied with the above, & shl not require any further or other title or evidce of title.

Title under will, intestacy and possession.

xviii. THE ppty passed to the prsnt vendor in 18— by deed of gift. The pchaser shl not found any objon or requon on this fact, but shl be satisfied with a declon, to be made by one of the donor's family, that the donor was at that time & has since continued amply solvent & has not since dealt or attempted to deal with the ppty.

Title under deed of gift (*e*).

xix. As to lot —, wch was pchased by the vendors in the yr — at a sale of a portion of the surplus lands of the —

Land purchased from Railway Company (*f*).

(*d*) See the General Inclosure Act, 6 & 7 Will. 4, c. 115, s. 33.

(*e*) Formerly a voluntary settlement of land was liable to be defeated under 27 Eliz. c. 4 by a subsequent conveyance for value made by the settlor before a conveyance for value was made by the person claiming under the settlement (3 Dav. Prec. pt. 1, 685). But this is no longer the case where the voluntary settlement was made bonâ fide and without any fraudulent intent, and the subsequent conveyance for value by the settlor was made after 28th June, 1893 (see the Voluntary Conveyances Act, 1893). The concurrence of the settlor in a conveyance made by the persons claiming under the settlement is only useful for the purpose of obtaining his covenants for title, and if the settlement was made before the 29th June, 1893, for the purpose of showing that he has not defeated the settlement. Where a settlement is void as against creditors as being fraudulent under 13 Eliz. c. 5, a bonâ-fide purchaser for value from the persons claiming under the settlement without notice of any fraud, whether his interest is legal or equitable, will be protected: *Halifax Joint Stock Banking Co. v. Gledhill*, [1891] 1 Ch. 31.

Title under voluntary deed.
27 Eliz.13 Eliz.
c. 5.

It used to be thought that the provisions of the Bankruptcy Act, 1883, s. 47, making certain settlements "void" extended to conveyances for value made by the persons claiming under the settlement, but it is now decided that a purchaser for value from them without notice of any fact avoiding the settlement will be protected: *Re Brall*, [1893] 2 Q. B. 381.

Bankruptcy Act, 1883.

(*f*) As to the sale of superfluous land by a railway company, see note, *post*, under CONVEYANCES.

Sale of superfluous land.

Rly Co, the abstract shl commence with the convce to the vendors, dated, &c., & the pchaser shl not call for or investigate the prior title, or make any requon or objon with respt to the powers of the Co, or their compliance with the requiremts of their Acts with refce to the acquison or sale of the ppty comprd in this lot.

Sale by
Railway
Company
or public
body (a).

xx. THE ppty (with other land) was pchased by the vendors in the yr 18—, for the pposes of their undertakg, or, “the pposes authorised by the — Act,” but is no longer required for such pposes, & as it is the practice of the vendors strictly to investigate the title to all ppty pchased by them, the title to be deduced shl consist exclusively of the deed of convce to the vendors, wch shl be assumed to have been effectual to vest the ppty in them, & it shl also be assumed that they have full power to sell & convey the same.

As to purchase by
trustees of
settlement;
exclusion
of right to
abstract of
settlement.

xxi. THE ppty havg been pchased in 18— by the trees of a settlemnt & conveyed to the uses [to them upon the trusts] thof, & havg been aftwds sold under the powers of [trusts of] such settlemnt [under the Settled Land Act, 1882], it is stipulated (to save expse) that the pchaser shl accept the recitals of or refces to such settlemnt & the apptmts of new trees thof, wch are contd in the convces exted on the pchase & re-sale of the ppty, as sufft, & shl not require any abstract or make any requon in respt of the sd settlemnt & apptmts of new trees.

The same
for purchase with-
out disclos-
ing trust
(b).

xxii. THE ppty, wch is being sold by the vendors as trees of a settlemnt, was pchased in 18— under a power contd in the settlemnt for the investmt of the trust moy in the pchase of land to be held in trust for re-sale, but was conveyed to the

(a) See note (f) previous page.

As to
trustees’
covenants
where
trust not
disclosed.

(b) This course is considered better than to attempt to resell without disclosing the trust, and in the event of a trustee having died, would be necessary to avoid difficulty as to death duties (see *infra*, CONVEYANCES ON SALE). If the trust is not disclosed, a question arises as to the covenants for title and production, &c., of deeds to be entered into by the trustees; and a condition may be necessary for their protection in these respects, unless they are willing to enter into the usual covenants of beneficial owners, the liability under which in such a case would be little (if anything) more than nominal. The condition might provide that they should only be required to covenant that they respectively have not encumbered, or (which would be practically sufficiently protective), that the liability of each under the covenants for title and further assurance should be restricted to the acts of himself and persons claiming under him, and (as to muniments) that an

trees witht disclosg the trust. The pchaser shl be satisfied with a short abstract of the above mentd clause in the settlemt, & of an apptmt of new trees thof in 18—, & shl not make any requon in respt of such settlemt & apptmt.

xxiii. In the yr —— a term was assned to attend the inhance. The pchaser shl not be entled to investigate the earlier title to the term or to require any evidce or informon, beyond what is afforded by such assnmt or the docs showg the title to the inhance, as to the creation of or prior dealgs with the same, *or*, “the vendors shl not [except at the pchaser’s expse] be required to show the creation of or to trace the title to any term wch has been assned to attend the inhance.”

Satisfied
term (c).

xxiv. A SMALL pt of the ppty was formerly waste of the manor of ———, & was enclosed with the consent of the homage given at a court baron held on the —— day of ——, as appears by an entry on the Ct rolls. It shl be assumed that the same thby became indefeasibly vested in fee simple in the pson who made the enclosure.

Waste
manor.

xxv. A ROAD boundg a portion of the ppty was in the yr —— diverted, & the old road or a portion thof togr with a small pce of the adjoining land was thrown into & now forms pt of the ppty in lieu of the land taken for the new road or thby severed from the ppty. No objon or requon shl be raised in respt of such diversion on the ground of any insufft authority for makg the same, or orwise as to the vendors’ title to the old road or the small pce of land.

Site of
road.

xxvi. THE ppty offered for sale consists of the bldgs & site known for many yrs past as ——, & the sale is made under the authority of the Board of Charity Commrs. The vendors shl not be bound to furnish any abstract of title, or to produce any deeds or evidce of title other than a copy of an order of the sd Board apptg the vendors to be trees of the charity, & vestg the legal este in the ppty in the Official Tree of Charity Lands, & a copy of anor order of the same Board sanctiong

Sale of
charity
land (d).

undertaking for safe custody should not be required. Such a condition (in whichever form) would not put the purchaser on enquiry as to the existence of a trust, or oblige the vendor to answer the enquiry if made.

(c) See the Satisfied Terms Act, 8 & 9 Vict. c. 112; Dart, V. & P. 576.

(d) See note, *post*, under CONVEYANCES, as to sales of charity lands.

the sale to the purchaser, which shall be accepted as a sufficient title.

As to roads
and rights
of way.

xxvii. Every purchaser shall be satisfied with such roads & rights of way to the property as at present exist, without requiring any evidence of the grant or right of user thereof.

Registered
title (a).

xxviii. The property is registered with an absolute title under the Land Transfer Act, 1875. The title will consist of a copy of the land certificate, & any evidence of identity or as to boundaries or extent (b) which the purchaser may require shall be at his own expense [or, & the purchaser shall assume that the description contained in the register is conclusive as to the boundaries & extent of the land].

Express
incorpora-
tion of
statutes
(c).

xxix. The vendors will deliver to the purchaser an abstract of their title to the property, & deduce a good title thence, subject to the combined operation of the Vendor & Purchaser Act, 1874, & the Conveyance & Law of Property Act, 1881, & these conditions.

III.

LEASEHOLDS (d).

Old lease
(e).

i. The purchaser shall be furnished with an abstract of the lease, dated, &c., under which the property is held, & of an assignment of such lease, dated, &c., & the subsequent title, & shall not question the validity of the lease, or make any objection or requisition in respect of the intermediate title to the premises between the lease & the said assignment, notwithstanding any recital of, or reference to such title contained in the assignment or any subsequent document, but shall assume

(a) See the Act, 38 & 39 Vict. c. 87.

(b) See s. 83 (5) which provides that the registered description of the land "shall not be conclusive as to boundaries or extent." This provision renders it very unsafe to buy building plots where the land is registered owing to the risk of some former owner having retained a narrow strip of frontage adjoining the road. See 11 Law Quarterly Review, p. 364.

(c) This could of course only be required in exceptional cases, as the Acts apply, unless excluded expressly or by implication.

(d) See above, p. 225 *et seq.*

(e) See *Frend v. Buckley*, L. R. 5 Q. B. 213; *Williams v. Shargo*, [1893] W. N. 100, 1 Dart, V. & P. 335, above, p. 226.

that the sd assnmt vested in the assnee a good title for the residue of the term.

II. THE abstract shl commence, as regards the vendors' [or leaseholders'] title, with a lease dated in 1850; & the purchaser shl not make any requisition or objection respecting the earlier leaseholders' title or the title of any of the lessors, nor require any evidence, beyond what appears on the lease, that the lessee of 1850 was the owner of the whole intt in the prevs lease thby expd to have been surrendered; & inasmuch as the lessors on each renewal require the surrendered lease to be delivered up, the purchaser shl be satisfied as regards such surrendered lease with the production of a doc purportg to be a copy or draft thof, & shl not require any proof of the surrender thof beyond what appears in such new lease.

Renewable
leaseholds.

III. No objection shl be taken, or indemnity required on acct of the lease or agrmt under wch the ppty [any lot] is held being an underlease, or agrmt for an underlease, or on acct of [such lease, or agrmt, or] the superior lease, comprisg other ppty besides the ppty sold [such lot] or being at a larger rent than the underlease or agrmt [or on the ground of the lessor not havg concurred in any apportionmt or exclusive chge of rent], or by reason of any variance betn the covts, provons, & condons in the superior lease & the underlease or agrmt or for any other reason connected with the superior lease.

Under-
lease; or
where part
only of the
property
in the lease
is sold.

IV. THE abstract shl commence with the superior lease & the purchaser shl not call for, or make any requisition or objection concerng the title of the superior landlord, or require any proof of the pformce of the covs & condons contd in the superior lease.

The same.

V. THE production of the last rect for the rent (witht proof being required of the title or authority of the pson givg the same) shl be conclusive evidence that all rent under any superior lease has been pd, & that all the covts & condons in the lease or agrmt for lease to wch such rect refers & in every superior lease have been pformed & observed, or that all breaches thof (whether past or continuing) have been effectually waived or sanctioned up to the time of the complon

Receipt for
rent.
Perform-
ance of
covenants
(f).

(f) See as to this condition, p. 226; *Lawrie v. Lees*, 7 App. Cas. 19, 32, 38; 26 Sol. J. 445.

of the pchase, whether it shl appear that the lessors or reversioners were cognisant of such breaches or not : [AND in parlar no objon or requon shl be made on the ground that the insce of any of the premes is not accdg to covt, & the vendors shl not be required to rectify any insce or to effect any fresh insce.]

The same where rent nominal or charged on other property (a).

VI. It shl be assumed witht evidce that [all rent accrued due under the lease has been pd, & that] all the covts & condons in the lease have been duly pformed & observed or that any breach thof has been effectually waived up to the complon of the pchase.

Non-execution of lease by one lessor.

VII. ONE of the ten trees of the ——— Charity, who are named as lessors in the lease of, &c., refd to in the parlars, did not exte such lease. The pchaser shl not on this ground question the validity or require any confirmon of the lease, but shl accept as sufft evidce of validity & existce thof the prodon of a rect for the last half yr's rent accrued due prior to the complon of the pchase.

Former assignments without license.

VIII. LOTS ——— are held under leases from the ——— Co. wch contain restrons agst alienon or underlettg witht license, & also require that all writgs relatg to the premes shd be prepared by the clerk of the lessors. The pchasers shl not make any objon or requon in respt of any dealgs with the leases appearg to have taken place witht license or in respt of the insufficiency of any license, or on acct of any instrumts relatg to the premes not appearg to have been prepared by the clerk of the Co.

License to assign (b).

IX. THE lease of lot ——— contns a restron agst alienon or underlettg witht the license of the lessor. The pchaser shl not enquire into the title of the pson by whom the license (wch will be procured by the vendors at their own expse) may purport to be signed, or his rt to grt the same, nor make any objon or requon resptg the sufficiency or form of such license.

The same. Purchaser to take underlease if necessary.

X. A LICENSE from the respive lessors to assn the leases [of lots ——— & ———] being necy, the vendors will endeavour to obtain such licenses at their own expse, but in case any

(a) See *Re Moody*, 28 Ch. D. 661 ; 30 Ch. D. 344 ; above, p. 226.

(b) As to when the licence should be obtained, see *Ellis v. Rogers*, 29 Ch. D. 661. Unless the lease contains an express provision to the contrary, no fine for such license is now payable, 55 & 56 Vict. c. 13 s. 2.

difficulty sh^l in the case of eir lot arise in this respt the contract [as to such lot] sh^l be carried out by an assnmt to an approved tree for the pchaser or by the grt of an underlease to the pchaser for the whole term except the last day.

XI. No objon sh^l be taken on acct of the sale being of derivative or sub-terms (wch were created by mtges by demise in the usual way, leavg a nominal reversion of one day of the term created by the origl lease outstandg in the mtgor in each case), & the vendors sh^l not be required to get in such revon of the ppal term or to show in whom it is now vested, but the pchaser will have the benefit of the provon in each of the mtge deeds makg the mtgor a tree of the nominal revon for him.

XII. THE lots being all held under the same lease, the sale sh^l be effectuated by the pchaser of such one of the lots as the vendors sh^l think fit takg an assnmt of the lease, subj^t to underleases of the other lots, to be previously grted by the vendors to the respive pchasers thof for the whole term less one day, at the respive apportioned rents mentd in the parlars, such underleases contg covts by the respive pchasers for paymt of such respive rents, & the pformce & observe of the

As to nominal reversion outstandg in mortgagor.

Leaseholds in lots held under one lease. One purchaser to take an assignment subject to underleases to the other purchasers (c).

(c) There is a want of uniformity in the practice as to the mode of selling leaseholds held under one lease in lots. The more common plan has been to assign the lease to the largest purchaser, by whom underleases are granted to the other purchasers (see the forms of such an assignment and underlease *infra*, CONVEYANCES ON SALE); but the plan above adopted of reserving to the vendor the right of determining which purchaser shall take the assignment seems better, as it makes it unnecessary to provide against difficulty which might otherwise arise in the event of the completion of the purchase of any lot being delayed. The above condition also departs from what has been the usual plan in providing that the underleases shall be granted by the vendor before the assignment instead of by the assignee afterwards; which also seems better. The main question is as to the covenants. In the assignment the vendor will, of course, if a beneficial owner, enter into the usual vendor's covenants for title (but which, if the underleases are previously granted by him, it is suggested should be subject to the qualification in the text to protect him from liability in respect of future breaches of covenant by the underlessees); or if a trustee or mortgagee, will merely covenant against incumbrances. As to the underleases there is more doubt. In the absence of stipulation each underlessee would be entitled, in addition to the usual covenant by the grantor for quiet enjoyment, to a covenant by him for payment of the rent under the original lease, and (which is somewhat onerous) for performance of the covenants as to the residue of the property: *Brown v. Paull*, 2 Jur. N. S. 317. It is obviously

As to selling leaseholds held under one lease in lots.

Covenants.

covts in the origl lease so far as the same relate to their respive lots, & the sd assnmt contg the usual covts by the assnee for the paymt, pformce & observe, & indemnity of the vendors [& the este of their testor] in respt of the rent, covts, & condons of the origl lease. The vendors will, if required, enter into the usual vendors' covts in the assnmt & underleases (a) for title & further assurce (but not so as to render themselves liable in respt of any future breach of any of the covts or condons of the origl lease on the pt of any of the pchasers) with the addon in the underleases of the usual acknmt for prodon & undertakg for safe custody of the lease & the other docs of title (if any) in the posson of the vendors [*or, if the vendors are trees or mtges*, but the vendors being trees [mtgees] will not enter into any covts in the assnmt & underleases, except the usual covt agst incumbces with the addon in the underleases of the usual restricted covt for quiet enjoymt & an acknmt for prodon, but witht any undertakg for safe custody (b) of the origl lease, &c.]. The sd assnmt shl be prepared in duplicate by & at the expse of the pchaser to whom it is made, & the underleases & counterpts thof shl be prepared by the vendors at the expse of the respive pchasers, such expse not to exceed £——, *or*, “to be accdg to the authorised scale chge under the Solors’ Remuneron Act, 1881” (c) in each

reasonable that the purchasers who take underleases should not thereby be deprived of the vendor’s covenants for title; and in fact if the underleases are granted by the purchaser who takes the assignment of the lease, the underlessees would have the benefit of the vendor’s statutory covenants for title in the assignment: see the Conv. Act, s. 7 (6). On the whole, if the vendor grants the underleases it is conceived that the covenants should be as in the text, which (as qualified above) would not be unduly onerous. If the underleases are granted by the purchaser who takes the assignment, he should covenant in the usual form for quiet enjoyment, and for payment of the rent and performance of the covenants in the head lease, and production of the head lease and other muniments; but in order not to deter purchasers (especially trustees), it may perhaps be better to restrict the covenant for performance of the covenants to the part retained by the covenantor. Trustees or mortgagees cannot in the absence of a special power convey on a sale by underlease: *Yates v. Smethurst*, C. A., 1 Dec. 1892 (not reported).

(a) The statutory covenants would not apply to the underleases, except by express incorporation. See the Conv. Act, 1881, s. 7 (5).

(b) See above, p. 256, note.

(c) It may be better to state whether this is to be a combination of the scale charges for leases and sales, or the latter only, to prevent disputes.

case, exclusive of stamp duty, & shl be in the form wch will be produced at the sale, *or*, “ & any question as to the form of the assnmt or any underlease shl be refd for decision to the vendors’ counsel.” If any lot remains unsold the origl lease & other docs of title (if any) will be retained by the vendors, who shl in that case stand in the place of the assnee of the lease for the pposes of this condon.

xiii. THE ppty is held under an agrmt, dated, &c., for the grtg of leases of the sevl tenemts to the vendors, *the builders*, or their nominees (no leases havg yet been grted). A copy of this agrmt may be seen at any time bfe or after the sale at the office of the lessors’ solors, durg business hours ; but no pchaser shl be entled to any abstract or copy thof, or to make any objon or requon in respt of anythg thrin contd, or in respt of the lessors’ title wch shl not be called for, or inquired into. And upon paymt of the balce of the pchase-moy at the time & place afsd, the lessors will grt to each pchaser as nominee of the vendors a lease of the lot or lots, or (in case any pchaser of more than one lot shl so require) a septe lease of each lot pchased by him, every such lease to be prepared by the lessors’ solors, & to be at the ground rent & for the term stated in the parlars, & accdg to a form wch may be seen at any time previously to the sale at the office afsd & will be produced at the sale, with such modificons only as the circes of each case may require ; each pchaser shl at the same time exte & deliver to the lessor a counterpt of his lease, & all expses attendg the preparon & the perusal on behalf of & exon by all pties except the vendors of each lease & counterpt shl be borne by the pchaser, *or*, “ & the sum of £—— shl be pd to the vendors by each pchaser (in addon to the stamp duty) for the expse of the preparon, perusal, & exon by or on behalf of the vendors & lessors of each lease & counterpt.”

Sale of leaseholds by builders in lots.

Leases to be granted to purchasers.

xiv. No objon shl be raised on the ground of any of the underleases to or agrmts with the tenants being at variance with the covts or condons of the origl [or any superior] lease or otherwise irregular.

Irregularities in underleases.

IV.

As to VARIOUS DESCRIPTIONS of PROPERTY.

Advowson
(a).

I. IN case of the dece of the psnt incumbent of the sd benefice, or of his cession or relinquishmt thof bfe the complon of the pchase, the vendor will within due time, at the reqt & expse of the pchaser, psnt such pson (being duly qualified) as the pchaser (he havg accepted the title & pd the pchase-moy) shl nominate, & if such psnton devolve on the Crown in consequence of the incumbent being promoted to a bishopric eir bfe or after the complon of the pchase, the sale of the advowson shl not be affected thby, nor shl the pchaser be entled to any dedon out of the pchase-moy.

Manor (b).

II. THE vendors shl not be required to show the boundaries, extent, nature, or constituents of the manor, or to furnish any other evidece or informon in relon thto than may appear from the manorial books & docs in the vendors' posson, & no objon shl be taken on acct of any of such books or docs being defective or wantg.

Reversion
(c).

III. THE pchaser shl be entled to all advantages of the sd reversion from the time of sale, & shl bear the duties payable in respt thof on the death of the tenant for life, and if he shall die bfe the complon of the pchase, the rents & income or posson shl thenceforth belong to the pchaser, who shl pay intt on his pchase-moy at the rate of £ — p.c. p.a. from the day appted for complon in case the actual complon shl be delayed beyond that day.

Life estate.

IV. THE pchaser shl be at the risk of the droppg of the life of the sd —, & in the event of his death bfe the complon of

Exception
of demesne
lands, &c.

(a) See the note to the Precedent of a conveyance of advowson, *infra*.

(b) Where there are demesne lands or other constituents of the manor, such as mineral rights or an advowson, which are not to be included in the sale, they must be expressly excepted; see 2 Dav. Prec. pt. 2, p. 769, note; 1 Dart, V. & P. 138.

Sale of
reversion.

(c) On a sale of a reversion in land with buildings and timber thereon, the fact, if it be so, that the tenant for life is not impeachable for waste, should be stated as affecting the value. The powers of sale and leasing possessed by the tenant for life under the Settled Land Acts should also be borne in mind as affecting the transaction; see *Wheelwright v. Walker*, 23 Ch. D. 752.

the pchase, shl nevs pay the pchase-moy & such intt (if any) as may be payable thron accdg to the ——— condon.

v. THE vendor shl not be required to show title or evidce of title to any rights of way or water or other easemts or rights of common which are used or enjoyed with the ppty or any pt thof except such evidce as may be in his posson & a statutory declon to be made if required at the pchaser's expse that such rts have been used & enjoyed for a period of ——— yrs prior to the sale.

Rights of way, &c., enjoyed with the property.

vi. THE prodon of the rect for the last premium shl be accepted by the pchaser as conclusive evidce (witht proof of the age of the assured, or of any of the facts stated in the declon on wch the poly was grted, or any other mre) that the poly is valid & subsistg.

Policy of assurance.

vii. THE pchaser shl not require proof of the truth of the statemts relatg to the age & state of health of the pson on whose life the poly was effected, or any other statemts contd in the declon upon wch the poly was based, nor any proof that the pson by whom the poly was effected had then or has since continued to have a sufft intt in the life of the assured to support the assurse.

The same. Another form.

viii. No title shl be required to be shown to any of the plant, machy, chattels, or effects, included in the sale.

Chattels personal (d).

V.

MISCELLANEOUS CONDITIONS *as to* TITLE *and* COMPLETION.

i. THE vendor is sellg as mtgee, under a power of sale. The pchaser shl not be entled to any further proof that the mtge-moy remains owing or that the power of sale is pperly exercisable than the prodon of the mtge-deed, nor require the concurrence of the mtgor or any other pson except the vendor in the convce.

Sale by mortgagee (e).

(d) This of course could only be needed in exceptional cases.

(e) This and the next condition would not be necessary if the power of sale is in proper form, or under the statutory power; but see *Parkinson v. Hanbury*, 1 Dr. & Sm. 143, 2 De G. J. & S. 450, L. R. 2 H. L. 1; *Selwyn v. Garfit*, 38 Ch. D. 273.

Former
sale by
mortgagee.

II. THE ppty was conveyed to the vendors in the yr — by a mtgee, under a power of sale contd in the mtge. The pchaser shl not require proof that pper notice to pay off the mtge-moy had been given to the mtgor, or that default had been made in paymt thof, or in any way question the regularity of the sale.

Endorsed
receipt not
signed (a).

III. No objon or requon shl be made on the ground that the rect for the conson endorsed on a pchase-deed in 18— is not signed.

Enlarge-
ment of
long term
under
Conv.
Acts (b).

IV. By a deed poll in 18— under the provons of the Conveg Acts, 1881 & 1882, pt of the ppty wch was previously leasehd for a long term was expd to be enlarged by the benefl owner into a fee simple. No objon or requon shl be made on acct of the lease or a copy thof not being forthcomg, or as to the contents thof or the identity of the pcels or orwise in relon thto, & it shl be assumed that the sd deed poll operated as an effectual enlargemt accdg to its tenor.

Proceed-
ings in
Chancery.

V. THE ppty was pchased in the yr — at a sale by the Ct of Chancery in a suit for extg the trusts of a will. The chief clerk's certfes in the suit in wch the este was administered shl be accepted as conclusive evidece of the mres thrin found & certified, & the pchaser shl not require any copies, extracts, or abstracts of the evidece on wch such certfes were founded, or any proof beyond what appears on the record of the pper pties havg been bfe the Court, & shl assume the regularity of the pcdgs in the suit in all respts (c).

Supple-
mental
abstract
where en-
franchise-
ment
pending.

VI. As regards any enfranchisemt or commuton of manorial rights wch may be pendg but incomplete at the time of the delivery of the abstract, the vendor shl deliver a supplemental abstract of the same as soon thrafter as circes will permit; & these condons shl be considered to apply to such supplemental abstract as from the time of the delivery thof.

As to con-
stitution,
&c., of
company.

VII. No requon or objon shl be made as to the constiton powers or pcdgs of or orwise in relon to a Co by whom the

(a) See now the Conv. Act, 1881, ss. 54, 55; and *infra*, CONVEYANCES ON SALE.

(b) See the Act of 1881, s. 65, and the Act of 1882, s. 11; and Vol. II. MISCELLANEOUS, note to deed enlarging term.

(c) See now the Conv. Act, 1881, s. 70; *Re Hall Dars*, 21 Ch. D. 41 *Mostyn v. Mostyn*, [1893] 3 Ch. 376.

ppty was acquired in 18—, & afterwards sold in 18—, but such acquison & sale shl be assumed to have been valid & effectual in all respts.

viii. THE prodon of a printed copy of the rules of any Benefit Bldg Socy, incorpd or unincorpd, with a copy of the certfe of the certifying barrister or of the certfe of incorporon (as the case may be) certified by the secretary or other officer of the socy, shl be taken as conclusive evidce that the socy was & is duly constituted, & no evidce shl be required of the apptmt of any origl or substituted trees, dirors, or other officers of any such socy, & no objon or question shl be raised as to the operon or effect of any statutory rect given on the redmon of any mtge to any such socy or the trees thof, & all acts htofore done or for the pposes of this sale hrafter to be done by any such socy or the trees thof shl be deemed to have been & to be authorised & valid in all respts.

As to
building
societies
(d).

ix. THE pchaser shl not require the prodon of the rules or any informon as to the constiton of any Bldg Socy to wch or to the trees whof any of the ppty has been mtged, & shl assume witht any evidce that the psons to whom any such mtge was made, & the psons signg the rect on redmon thof, were resply the duly constituted trees for the time being of the socy.

The same.

x. THE pchaser shl not require any evidce of the failure of issue of K., named in a deed in 18—, or of the number & names of the chn of L., also thrin named, or that M., one of such chn, died under age & witht havg been married, or of any other mre relatg to the pedigree of the vendors, other than a statutory declon of those facts lately made by a member of the family, the statemts in wch shl (witht any further evidce by prodon of certfes or orwise) be accepted as correct & sufft in all respts, & no objon shl be taken on acct of the declon havg been made by an inttd pson.

Evidence of
pedigree.

xi. It shl be assumed that a pson who left this country about 30 yrs ago, & of whom nothing has since been heard, is

Presump-
tion of
death (e).

(d) As to evidence of the constitution and rules of the Society, see 6 & 7 Will. IV., c. 32, s. 4; 37 & 38 Vict. c. 42, ss. 17, 20. As to the effect of the statutory receipt on redemption of a mortgage, see the former Act, s. 5; and the latter Act, s. 42; and *infra*, MORTGAGES.

As to
building
societies.

(e) See 34 Solors. J. 247, 263, 380.

dead [dead before —], upon the evidence afforded by a statutory declon of those facts by a disintted pson.

Partner-
ship pro-
perty.

XII. Pt of the ppty was acquired by the vendor's testor, with a ptner who died in 18—, as ptnp or jt ppty. An agreemt betn the testor & the repves of the deced ptner contg an endorsed rect for the pchase-moy payable by the testor thrunder shl be considered as havg been a full settlemt of all questions betn the pties witht prodon of the ptnp articles, & also as a makg over of all intt of the deced ptner in the ptnp or jt ppty to the testor, & such agrmt shl not now as to any equitable este or intt be required to be carried out by convce, & as to any other mre thrunder shl be assumed to have been fully & effectually carried into effect.

Title under
re-entry for
non-pay-
ment of
perpetual
rent-
charge.

XIII. THE title is derived under a peaceable re-entry made in 18— by virtue of a power of absolute re-entry for non-paymt of a perpetual rent-chge of £—— contd in a deed in 18— by wch such rent-chge was reserved, & the vendors or their predecessors in title have ever since been in undisturbed posson or rect of the rents of the ppty. A statutory declon or declons by a pson or psons acquainted with the facts & speakg to the best of his or their knowledge, informon, & belief, shl be accepted as sufft & conclusive evidence of these facts, & that the power of re-entry had arisen & was well exercised, & that the seisin in fee of the ppty was thby acquired dischged of all claims of the previous owner, & no question shl be raised as to the validity of the power of re-entry (a).

Mistake as
to tenure
of land
subject to
fee farm
rent.

XIV. A PORTION of the ppty in the parish of —, wch is believed to be freehd, subjt only to the fee farm rent mentd in the parlars, has in sevl docs been treated as leasehd witht statg the term of yrs for wch, or the pson under whom, it was supposed to have been held. A declon will be furnished by a pson who has known the ppty for — yrs, & for many yrs acted as agent for the owner in collectg the rents & dischg the outgoings, that he has always understood & still believes this land to be freehd. The pchaser shl therefore accept such title to this land as the vendors have, & take a convce thof from them as freehd.

Payment of
price of
underwood

XV. ON a sale of pt of the ppty in 18— by trees of a

(a) See *infra*, p. 306, note.

settlemt a sum of £——was pd to the tenant for life for the growg underwood. No objon or requon shl be founded on this.

to life
tenant.

xvi. No objon shl be taken with respt to the terms of the agrmts with the tenants [or on acct of the same havg been entd into by the mtgor alone (b)] or any irregularity thrin.

As to agree-
ments with
tenants.

xvii. ANY insurce against fire subsistg on the ppty [any lot] shl from the time of sale be for the benefit of the pchaser, subjt to the consent of the office, and subjt to the pchase being completed, & to the pchaser paying a proportionate pt of the prem for the unexpired term of the insurce, but the vendor shl not be bound to keep up or renew the insurce. [In the event of the occurrc of a fire bfe the complon of the pchase, the insurce moy shl (subjt as afsd) be applied in reinstatg the ppty, or shl, at the option of the pchaser, be pd to him on completion.]

Insurance
against
fire (c).

xviii. SUCH of the lots as are within the manor of —— are sold and will be conveyed subjt to a reservon to the vendor of all manorial rts belongg to him as lord of such manor except such (if any) of those rts as are exply included in the sale.

Vendor
lord of
manor.

xix. PCHASERS shl assume witht enquiry or requon that all duties wch became payable on the death of any pson who died more than —— yrs bfe the date of the sale have been pd.

Payment of
death
duties (d).

xx. EVERY wall or fence betn any two lots or betn any lot &

Party walls
(e).

(b) See as to this, the Conv. Act, 1881, s. 18.

(c) Without this provision the purchaser will not get the benefit of the insurance (see *Rayner v. Preston*, 18 Ch. D. 1; *Castellain v. Preston*, 11 Q. B. D. 380) unless he could do so indirectly by calling on the insurance company to reinstate the building under the Act, 14 Geo. 3, c. 78, s. 83. Qu., however, whether the decision in *Exp. Gorely*, 4 De G. J. & S. 477, that that enactment applies beyond the bills of mortality, is right; see per Lord Watson in *Westminster Fire Office v. Glasgow, &c., Society*, 13 App. Cas. at p. 716; and cf. per Lord Selborne at p. 714; see also Elph. Introd. 155. This form of condition avoids the objection suggested in 1 Dart, V. & P. 196. Sometimes the purchaser effects a temporary insurance on entering into the contract. If part of the purchase money is to remain on mortgage, the provision giving the purchaser the right to receive the insurance money will of course be omitted.

As to fire
insurance.

(d) As to Succession Duty, see the Customs, &c., Act, 1889, 52 Vict. c. 7, ss. 12-15, and as to Estate Duty, the Finance Act, 1894 (57 & 58 Vict. c. 30), s. 8 (2).

(e) As to the meaning of the phrase "party-wall," see Elph. N. & C. Interpretation, 606. A conveyance in the form in the text will make the adjoining owners tenants of common of the wall: *Watson v. Gray*, 14 Ch. D. 192.

any other ppty of the vendor shl be deemed to be a pty wall to be maintained & repaired at the jt expse of the respive owners for the time being of the ppties septed thby.

Property to be at risk of purchaser (a).

XXI. THE ppty shl as to any damage by fire, tempest, or other inevitable accident arisg after the sale be at the risk of the pchaser, & no claim shl be made agst the vendor for any deterioron or damage from whatever cause, unless occasd by his wilful neglect or default.

Requirements of local authorities as to paving, &c. (b).

XXII. IN case at any time after the sale & bfe the complon of the pchase, any requiremt or demand shl be made by the Municipal Corporon, Local Board of Health, or other local authority, in respt of any lot, or of the formg, pavg, sewerg, or draing of the roads, streets, or passages adjoining the same, the pchaser shl, on the complon of the pchase, repay to the vendor the amt expended by him in complying with such requiremt or demand, & in case any such requiremt or demand shl not have been complied with bfe the complon of the pchase, the pchaser shl indemnify the vendor in respt thof; but the vendor shl, upon receivg notice of any such requiremt, inform the pchaser thof, & give him the option of complying thwith in lieu of the vendor, & shl not expend any moy for that ppose unless the pchaser shl refuse or neglect to comply thwith.

Execution of former conveyance by attorney (c).

XXIII. IN the yr — a convce of pt of the ppty was exted by atty. No objon shl be made as to the sufficiency of the power of atty, & no proof shl be required that the ppal was then alive, or that the power remained in force.

Execution by attorney (c).

XXIV. One of the vendors being abroad, the convces will, as regards him, be exted by atty, & every pchaser shl be satisfied with such exon, & shl assume that such power of atty is valid & subsistg, witht requirg any evidece that such vendor is alive or orwise.

Provision for one of vendors

XXV. THE este being held in undivided shares, & the owner of one of such shares being resident abroad in —, if any

(a) See Dart, V. & P. 286; *Clarke v. Ramuz*, [1891] 2 Q. B. 456. As to fire insurance, see above, p. 269, note.

(b) See p. 234, note (a).

(c) As to execution by attorney, see the Conv. Act, 1881, ss. 46–48; the Conv. Act, 1882, ss. 8, 9, and p. 179, note, and as to execution by the attorney under a general power by a vendor trustee, see *Re Hetling*, [1893] 3 Ch. 269.

delay or difficulty occur in obtaining a conveyance of such share, the purchaser shall retain a proportionate part of the unpaid balance of the purchase-money, & pay interest thereon at the rate of £4 p.c. p.a., until such share shall be duly conveyed. being abroad.

xxvi. THE party [Any two or more lots bought by the same purchaser] shall be assured to the purchaser or his nominees in such parcels & by such conveyance or conveyances as the purchaser shall think fit, but any additional costs occasioned to the vendors by more than one deed of conveyance being required shall be paid by the purchaser. As to separate conveyances.

xxvii. WITH the exception of the expense of making & delivering the abstract, all expenses whatsoever (whether occasioned to the vendors or the purchaser) of & incidental to the verification or completion of the abstract, or the investigation or proof of the title, or the preparation, perusal, execution, & completion of the conveyance, & any other deeds, & all other costs & charges relating to the sale shall be borne & paid by the purchaser. Expenses. Stringent (d).

xxviii. THE purchaser shall be entitled to possession on signing the subjoined agreement & paying the deposit & all outgoings, & shall pay interest at £4 p.c. p.a. on the unpaid balance of the purchase-money from the day of sale up to the day fixed for completion whether he actually takes possession or not, & if from any cause other than the wilful default of the vendor the purchase is not then completed, the purchaser shall pay interest at £5 p.c. p.a. on such balance from that day until completion. In the event of the purchaser taking possession he shall keep the property insured against fire up to three-fourths of its value, & shall not make any alteration therein without the vendor's consent until after the completion of the purchase, but such taking of possession shall not be deemed an acceptance of the title, & in the event of the sale being annulled he shall redeliver possession and pay interest as aforesaid & make good dilapidations arising during his occupation, reasonable wear excepted, without making any claim against the vendor in respect of his expenditure on the property. Option to purchaser to take immediate possession.

xxix. IF any purchaser shall within seven days after the sale give to the vendor's solicitor notice in writing of his desire to borrow any portion of the purchase-money, the vendor will lend or procure to be lent to the purchaser the amount specified in such notice not exceeding — p.c. of the purchase-money at interest at £5 p.c. p.a. : Provision for advance of part of purchase-money on mortgage (e).

(d) See another stringent form, *infra*, p. 325.

(e) Compare the form, *infra*, p. 342.

[the purchaser having the option of paying off the loan or any part thereof not being less than £—— in any one payment at any time within —— years of the date fixed for completion, conditionally on the punctual payment of interest] such loan & interest to be secured by mortgage of the purchaser's lot or lots in the usual manner at the expense of the purchaser, such expense not to exceed £—— for each lot exclusive of stamp duty & of the charges (if any) of the purchaser's own solicitor, such mortgage to contain provisions for the continuance of the loan at the option of the purchaser for —— years from the date fixed for completion conditionally on the punctual payment of the interest, and the form of such mortgage (if the parties differ) to be settled by counsel to be nominated by the vendor (a), but this agreement to advance money is conditional upon the purchase & mortgage being completed within the time appointed for the completion of the purchase.

Provision
for pay-
ment by
instal-
ments (b).

XXX. EACH purchaser, unless he avails himself of the option given by this condition of paying by instalments, shall pay the balance of his purchase-money, &c., *usual condition for payment, & of interest in case of default.* Upon payment of the balance of the purchase-money & interest (if any) as aforesaid, or upon signing the agreement for payment by instalments as provided by this condition (as the case may be), the purchaser shall be entitled to possession of the rents & profits as from the said —— day of ——, down to which time all outgoings shall be paid by the vendor. Each purchaser shall have the option of paying the balance of his purchase-money by equal half yearly instalments extending over a period of —— years from the day of sale, with interest at the rate of, &c., on the amount for the time being remaining unpaid, provided he shall within seven days from the day of sale deliver to the vendor's solicitors notice in writing of his desire so to do, together with a print of the subjoined agreement (c) in

(a) Or "By the president for the time being of the Incorporated Law Society."

(b) Compare the form, *infra*, p. 343.

(c) *Form of Agreement annexed.*

Form of
agreement.

"Agreement made the —— day of —— between the above-named A., vendor (hereinafter called the vendor), of the one part, & B., of, &c. (hereinafter called the purchaser), of the other part, whereby it is agreed as follows:—

"1. The purchaser having purchased lot —— in the annexed par-

that behalf, duly signed by him, with the parlars & these condons annexed, but the pchaser shl have the option at any time of payg off the balce remaing due of his pchase-moy with intt to the day of paymt without any previous notice of his intention so to do. Upon paymt of the balce of his pchase-moy (whether in a gross sum or by instalmts) with intt (if any) each pchaser shl be entled to a convce, &c. If any pchaser shl make default in paymt of the balce of his pchase-moy or any instalmt thof, as. provd by these condons or the agrmt to be signed by him under the ——— condon (as the case may be), & shl not in all other respts pform these condons & such agrmt (if any), the vendors shl be at liberty, &c., *usual provon for default.*

xxxI. ANY dispute or diffce arisg either betn any pchaser & the vendors, or betn any of the pchasers, on any mre arisg out of the parlars or plans, shl be left wholly to the auctioneer to determine, who shl also decide how the costs of such refce shl be borne, & his decision shl be bindg on all pties.

Disputes to
be referred
to auc-
tioneer.

lars & havg pd one-tenth of the pchase-moy, shall be permitted to pay & hby agrees with the vendor to pay the balce of his pchase-moy by nine yrly instalmts of £—— each, with intt at the rate of 5 p.c. p.a. to be pd at the same time on the amt remaing due immedly befe paymt of each instalmt, & the first instalmt, with intt as afsd, to be pd on the ——— day of. ——— & anor instalmt on the same day in each of the succeedg eight yrs, or earlier at the option of the pchaser.

“2. When the whole of the balce with intt & costs (if any) as hinafter provd for shl have been pd the pchaser shl be entld to his convce, & if befe the convce shl have been completed the pchaser shd die or any other event shd happen tending to occasion further costs or expses than would be orwise incurred, the pchaser, or the psons derivg title under him, shl pay all such costs & expses, & the convce is not to be exted until they are pd.

“3. The pchaser shl not until he has reced his convce dig or remove from the lot or lots pchased by him any gravel, clay, brick, chalk, stone, or other substce without the consent in writing of the vendor, nor shl the land be orwise disturbed except in the ordinary course of cultivon or for bldg ppses. As wrrs the hands of the pties.”

As to statements of fact in conditions (a).

XXXII. THE statements of facts made by the vendors in the parlars & these condons are believed by them to be correct, but they shl not be required to adduce any proof thof beyond what is in their posson.

Incorporation of common conditions of provincial Law Society (b).

XXXIII. THE sale is subjt to the common form condons of the — Law Society, but so that in case of varice or inconsistency these special condons shl prevail.

Free conveyance.

XXXIV. THE [any] pchaser on [giving notice in writg to the vendor's solor within one week after the delivery of the abstract to him that he will] [or signg the subjoined mem electg to (c)] accept the title witht making any requon in respt thof shall be entled to have a convce in a form which will be produced at the sale exted & delivered to him free of cost except stamp duty & a fee of £——.

VI.

INCUMBRANCES *and* OUTSTANDING ESTATES, &c.

Payment of legacies and annuities.

I. It shl be assumed that all legacies bequed by a testor who died —— yrs or upwards bfe the sale, have been pd; & that two anns of £—— & £——, bequed by a testor, who died in the yr ——, have ceased by the deaths of the annuitants or been reled, & that all arrears thof have been pd, *or*, “that all legacies & anns bequed by any testor, who died 20 yrs & upwards bfe the sale, have been duly pd & satisfied or ceased, & that there is no outstandg chge or claim in respt thof.”

Annuity.

II. THE pchaser shl not require any rele, or make any requon or objon in respt of an anny of £——, given by a testor, who died in the yr ——, to a pson who appears from the recital of a deed of covt for paymt of & indemnity agst such anny, dated, &c., to have been then aged ——.

(a) See as to this, 1 Dart, V. & P. 170.

(b) See 1 Dart, 139.

(c) If the words in this bracket are used, add below the memorandum “I elect to accept the title witht makg any requon in respt thof” to be signed by the purchaser.

iii. Pt of the ppty sold is with other ppty subj to a life anny of £——. The vendors will endeavour to obtain a rele from the annuitant; but shd they be unable to do so, of wch inability the statemt of their solor shl be sufft evidce, the pchaser shl be satisfied with the investmt of a portion of the pchase-moy in the pchase in the names of two trees (one to be appted by each pty) of a governmt anny of like amt, or of governmt stk, the divids whof will suffice to answer the sd anny, upon trusts for securg the paymt of the sd anny & subj thto for the vendors such trusts to be decl'd by a deed to be prepared by & at the expse of the vendors, the pchaser bearg the expse of the approval & exon thof on his pt.

Indemnity
against life
annuity by
investment
of fund (d).

iv. THE ppty togr with other family ppty in the same coy may become, under the marre settlem't of the vendor, subj to a life anny of £—— to his wife, if she survives him, & to a chge of £—— for the benefit of chn, but as the other ppty subj to the chge is of considerable extent, & far exceeds in value any chges wch can thus arise (of wch fact no proof further than appears by the abstract shl be required) the respve pchasers shl not be entled to require any rele of these chges or to make any inquiries resptg them, but shl be satisfied with the covt of the vendor to indemnify the pchaser & the pchased ppty agst the same [togr with a chge thof on the unsold pt of the ppty in exoneron of the pt sold, & the approp'ion in the names of three respectable trees to be nominated by the vendor of the sum of £—— 2½ p.c. consold stk, to be held upon pper trusts (to be decl'd by a deed to be prepared by & at the expse of the vendor), for securg the paymt of the sd chges, & subj thto upon trusts for the benefit of the vendor, includg a trust for paymt of the income to him until the same shl be required for meetg the sd chges, & with a power to the trees to transpose the investmt of the fund into any investmts authorised by law for the investmt of trust moy, except mtges in Ireland, & any other pper or usual provons].

Indemnity
against
family
charges (d).

(d) See now the useful provision in the Conv. Act, 1881, s. 5 (the machinery of which, however, would often be too expensive); and as to settled estates, the Settled Land Act, 1882, ss. 5, 24 (4, 5, 6); *Re Ailesbury*, [1893] 2 Ch. 345; discussed, 37 Sol. J. 336.

Outstand-
ing legal
estate.

v. UPON a convce of the ppty in the yr —, the concurrence of a tree or trees in whom the legal este was outstandg was not obtained. The pchaser shl not require the vendors to procure a reconvce of such legal este, or to trace the devolon thof, or make any requon or objon in relon thto.

The same.
Another
form.

vi. ANY legal este wch may be outstandg shl, if required to be got in, be traced & got in by the pchaser at his own expse.

Satisfac-
tion of old
mortgage
(a).

vii. WITH the title deeds of lot — is a mtge for £—, dated, &c., of the satisfon of wch the vendors have no evidece beyond their posson of the mtge deed, but the convce to their testor contains an indemnity agst such mtge. The pchaser of this lot shl assume that the mtge has long since been satisfied, & shl not make any objon or requon on acct of the absce of a reconvce or receipt for the mtge moy.

Lease not
formally
surren-
dered.

viii. THE vendors have no evidece that a lease of the ppty, wch was granted in 18— for the term of — yrs from —, was formally surrendered prior to the grantg in 18— by the predecessors in title of the vendors of a fresh lease thof to anor pson, under wch posson has since been held. The pchaser shl assume that such former lease was duly surrendered, & shl not make any objon or requon in respt thof.

Restrictive
covenants
(b).

ix. LOTS — are subjt to certain covts & restrons as to buildg, drainage, roads, carryg on trades & other mres contd in a convce in 18— [to the vendor] a copy whof can be seen at the office of the vendor's solors. [The respve pchasers shl covt to observe such covts & restrons & to indemnify the vendor in respt of any psonal liability to wch he may be subjt in respt thof &] no proof shl be required that the same have been observed, or, "no objon shl be made on acct of any of such covts & restrons not havg been observed."

Reserva-
tions of
minerals,
&c.

x. THE ppty is sold subjt to the reservons of mines & minls

(a) See *Sandsto Thompson*, 22 Ch. D. 614; *Kibble v. Fairthorne*, 1895, 1 Ch. 219.

Restrictive
covenants
to be spe-
cifically
notified.

(b) The existence of restrictive covenants should be specially notified: see as to this *Re Gloag*, 23 Ch. D. 320; *Dunn v. Flood*, 25 Ch. D. 629; 28 Ch. D. 586; *Ellis v. Rogers*, 29 Ch. D. 661; *Nottingham, &c., Co. v. Butler*, 15 Q. B. D. 261; 16 Q. B. D. 778; *Re Davis*, 40 Ch. D. 601; *Re Ebsworth*, 42 Ch. D. 23; *Re Cox*, [1891] 2 Ch. 109; and as to restrictive covenants generally, see *infra*, p. 285. As to the liability of the purchaser in the absence of special stipulation to give a covenant of indemnity, see 1 Dart, V. & P. 631, 632.

contd or refd to in the sevl documts formg the stipulated commencmts of title [& to such other reservons & liabilities as the same may be subjt to under any enclosure act or award].

XI. By deed dated, &c., lot 1 & portions of lots 2 & 3 were mtged to two psons for securg £—— & intt, witht any statemt that the moy belonged to them on a jt acct. After the death of one of the mtgees, the survor by deed dated, &c., transferred the mtge to anor pson, & the psonal repves of the deced mtgee did not concur in such transfer. No objon or requon shl be made on this acct.

Mortgage
to two
persons,
without
joint
account
clause.

XII. On the pchase by the psnt vendor 3 of the psons then entled were infants: their shares of the pchase-moy (amtg to a comparatively small sum) were pd to a tree, who by deed poll undertook to hold the same in trust for the infants on their extg the convce, but in case of default then in trust for the psnt vendor. The convce contns a covt for the exon thof by the infants on their attng 21. One of the infants has since attned that age & has exted the convce & reced his share of the pchase-moy. The pchaser shl stand in the same position as the vendor with respt to the 2 other shares, & shl be satisfied in all respts with the above arrangemt, & take the ppty subjt thto.

Conveyance
of infants
property
(c).

XIII. THE pchaser shl take upon himself & satisfy all the vendors' liabilities to the outgoing tenant by virtue of the lease or agrmt, the custom of the country, or by statute or orwise.

Tenant
rights.

XIV. No pchaser shl require any incumbce to be dischged orwise than by the incumber joining in his convce, nor make any claim for costs by reason of the convce being thby increased in length or made complicated.

Release of
incum-
brances.

(c) See now the Conv. Act, 1881, s. 41, and the Settled Land Act, 1882, ss. 59, 60.

VII.

MISSING DEEDS, SECONDARY EVIDENCE.

Want of
covenant
to produce
(a).

I. CERTN deeds dated, &c. (comprisg other ppty besides the ppty now offered for sale), are not in the vendors' posson, & they have no covt for their prodon. The pson in whose posson such deeds now are will pduce them for examinon with the abstract; & the pchaser may have attested copies at his own expse, but he shl not object on acct of the absce of or require any covt or acknmt for the prodon of such deeds.

Deeds not
relating to
title (b).

II. In any case in wch any abstracted documt contns any notice of any deed or other documt not abstracted, the pchaser shl accept as conclusive the statemt of the solor of the vendors, that the same does not relate to the lot or lots pchased by him; but nevs the vendors will, if required, endeavour to procure the prodon of any such deed or documt for the satisfon of the pchaser at his expse.

Lost deed.
Recital
evidence.

III. A TRANSFER of mtge, dated in —, is believed to have been lost many yrs ago, & the vendors have no copy or abstract thof, but the same is recited in a convce dated, &c. No objon or requon shl be made in respt of the loss or non-prodon of such transfer, & the recital thof contd in the sd convce shl be accepted as conclusive evidece of the contents & due exon thof.

The same.
General
form (c).

IV. THE pchaser shl not require an abstract or the prodon of any deed or instrumt not in the posson of the vendors, wch is recited or noticed in any abstracted deed, will, or other origl documt, dated — yrs or upwards prior to the sale, or require any further informon relative thto than appears from the abstract.

Attested
copy to be
evidence.

V. A MTGE, dated in the yr —, was upon a pchase in the yr — covted to be pduced by the pson in whose posson the same then was. The vendors, after much search & inquiry, have been unable to discover where this deed now is, but they have in their posson an attested copy thof purportg to have

(a) See the V. & P. Act, 1874, s. 2 (3): above, p. 226.

(b) See *Jones v. Smith*, 1 Ph. 244; Dart, V. & P. 970.

(c) See also GENERAL CONDITIONS, p. 236, clause 7.

been examined with the origl deed in the yr —, wch shl be accepted as sufft evidece of the contents & due exon of such mtge, witht prodon of the origl.

vi. THE vendors shl not be required to produce or trace or show the custody of any deed or instrumt not in their posson, *or*, “No objon shl be made on acct of the inability of the vendors to trace or procure the prodon of, or the want of a covt for the prodon of any deeds or munimts not in their posson.”

As to deeds
not forth-
coming.

Stringent.

VIII.

LAND-TAX and other OUTGOINGS, APPORTIONMENT (d).

i. A CERTFFE of the redmon of the land-tax, dated, &c., shl be accepted as sufft evidece of such redmon, witht proof of the identity of the lands in respt of wch the tax was re-deemed.

Exemption
from land-
tax (e).

ii. No evidece shl be required of the redmon of the land-tax except a certfe or declon of the collector of land-tax, *or*, “the vendors’ steward,” to be made if required at the pchaser’s expse, that the ppty is not now assessed to the land-tax, *or*, “that no land-tax is now [or, has for the last — yrs been] pd in respt of the ppty.”

The same.
Another
form.

iii. THE prodon of an office copy of a declon of merger (f) by a former owner of the tithe rent-charge shl be taken as conclusive evidece that the ppty is tithe free, *or*, “No pchaser

Freedom
from tithes.

(d) As to land subject to chief rents, see p. 307 *et seq.*

(e) It must be remembered that land tax “redeemed but not exonerated” (see 42 Geo. 3, c. 116, s. 123) is personal estate.

(f) Under the law before the Tithe Commutation Act, impropriate tithes notwithstanding unity of ownership, remained distinct from the land, and could not be merged; and they did not pass by a conveyance or devise of the land, unless expressly mentioned (Shelford on Tithes, 292). The same is now the case as regards the commutation rent-charge, unless it is merged under the Acts, *Chapman v. Gatcombe*, 2 Bing. N. C. 516; *Burton Comp.* 381. If, therefore, the tithes, though belonging to the vendor, are unmerged, the land is not accurately described as “tithe free,” and the vendor may be bound to merge them at his own expense; but if there was unity of possession at the time of the Tithe Commutation, the land would probably be entered as tithe free. As to merger, see 1 Dart, V. & P. 399, note.

Merger of
tithes.

shl be entled to any other proof of the ppty being tithe free than is afforded by the tithe apportionmt for the parish of —, wch shl be examined by the respive pchasers at their own expse.”

Exemption
from land-
tax and
tithes.

iv. No land-tax has ever been pd by or claimed agst the vendors, & the tithe rent-chge has been chged by them on other ppty of ample value; & each pchaser shl be satisfied by a declon to that effect, to be made (if required) at the expse of the pchaser, that his lot is free from land-tax & tithe rent-chge.

Quit rents,
tithes, &c.
Indemnity
against.

v. No objon or requon shl be made, or compenson claimed in respt of any quit rent, tithe rent-chge, or other similar liability to wch any of the premes now sold may be subjt togr with other lands, but in respt whof an indemnity has been given, or no paymt made for — yrs or upward; & the pchaser shl accept a statutory declon as conclusive evidce of such indemnity or non-paymt.

Apportion-
ment of
land-tax,
tithes,
rents, &c.
(a).

vi. THE pchaser shl in every case be satisfied with & accept as sufft the statemt in the parlars as to the amt of any land-tax, tithe rent-chge, quit rent, or apportioned pt thof, or other outgoing to wch the ppty or lot or pt of a lot is now subjt, or is for the ppose of the psnt sale to be taken as subjt, & shl not make any objon on the ground of any land-tax, tithe rent-chge, or other outgoing, not being now, or not havg been on a former occasion, legally apportioned, or require the same to be apportioned, or any indemnity agst any pt thof wch ought to be borne by other ppty. As to any ppty or lot wch is sold free from land-tax or tithe rent-chge, the pchaser shl be satisfied with such evidce of its being so free as the vendors may be able to adduce, & shl not make any objon on acct of the tithe rent-chge on any lot sold as tithe free being unmerged. The respive pchasers shl also be satisfied with the arrangemts made by the parlars for the apportionmt of the rents payable

Redemp-
tion of
rents.

(a) As to the redemption of quit rents and perpetual rents (other than tithe-rent charge, or rents reserved on sales or on grants for building purposes), see the Conv. Act, 1881, s. 45; as to enfranchisement rent-charges, see the Copyhold Act, 1894, repealing, and by s. 8 re-enacting with alterations the Copyhold Act, 1887, ss. 17, 18; and as to extraordinary tithe rent-charges, see 49 & 50 Vict. c. 54, ss. 5, 6. As to apportionment of tithe, see *Re Ebbworth*, 42 Ch. D. 23.

by the tenants in the case of ppty held by one tenant being separated into two or more lots or pts of lots, & shl not require the consent of the tenants to such apportionmt or make any requon in respt thof. [A legal apportionmt of any land-tax, tithe rent-chge, or other outgoing, or of any rents payable by the tenants, shl, nevs, if desired by any pchaser, be effected by the vendors, as far as circes will admit, & at the expse in all respts of such pchaser, *or*, "at the jt expse of the pchasers concerned thrin," but the complon of the pchase shl not be thby delayed, & the vendors shl, in respt of any unsold lot, for the ppose of this condon stand in the place of the pchaser.]

VII. THE vendors shl not be called upon to furnish any evidece beyond that shown by the munimts or docts in their posson of the rents & services under wch the ppty is held, or what parlar portions of the ppty [respsive lots] are subj to the quit-rents, land-tax, or other outgoings specified in the parlars.

As to copy-
hold pay-
ments, quit
rents, &c.

VIII. IF bfe the sale any moy shl have been expended in complyg with any requiremt enforceable agst the vendor & made bfe the sale by the Municipal Corporation, Local Board of Health or other Local Authority of the Borough or district within wch the ppty is situated in respt of such ppty or of the making, repairg, paving or flagging of the roads, streets, or passages adjoining the same, the vendor shl & will bfe the time fixed for the complon of the pchase, pay & dischge the same, & supply to the pchaser the necy evidece thof, but if after the sale & bfe the complon of the pchase, the vendor shl have expended any moy in complyg with any such requiremt as afsd, the pchaser shall on the complon of the pchase repay to the vendor the amt so expended by him, & in case any such last-mentd requiremt shl not have been complied with bfe the complon of the pchase, the pchaser shl indemnify the vendor in respt thof, but the vendor shl upon receivg notice of any such requiremt inform the pchaser thof, & give him the option of complyg thwith in lieu of the vendor, & shl not expend any moy for the ppose afsd unless the pchaser shl refuse or neglect to comply with such requiremt.

Charges
by local
authority.

IX.

IDENTITY, QUANTITY, MISDESCRIPTION.

Identity
(a).

I. THE purchaser shall not require any proof, beyond what is afforded by the muniments themselves, of the identity of the property with that described in any of the muniments [prior to a conveyance in the year —], or for distinguishing the portions held under the different titles. [But shall be entitled to a declaration to be made at his own expense that the purchased property has been held according to the title shown for — years & upwards].

The same.

II. THE vendors will, if required, but at the expense of the purchaser requiring the same, furnish or procure such evidence or information as may be in their power, for the purpose of identifying any lot or part of a lot as described in the particulars with the descriptions contained in the muniments, or of reconciling or connecting the quantities or descriptions where the same differ; but no reason for any such purpose or otherwise connected with the identification of the parcels shall be persevered in by any purchaser, after the vendors or their solicitors shall have declared their inability to comply therewith; & the title to any lot or part of a lot shall not be objected to in respect of any such defect of proof of identity or any failure to define the parts of the property held under different titles, but the purchaser shall in that case be entitled to a declaration, to be made at his own expense, that the purchased property has been held in conformity with the title as deduced for — years & upwards.

Quantity.

III. THE contents & dimensions of the property as stated in the particulars & plan having been taken from an actual survey, are believed & shall be taken to be correct, although the same may differ from the results of other surveys, or from the contents mentioned in some of the muniments [or, the quantities contained in the book of reference to the Ordnance map (b) for the said parish of —].

Identity
and quantity.

IV. No objection shall be taken on the ground that any of the old

(a) This condition amounts to a contract that the muniments show identity, and if they do not a good title is not shown, *Curling v. Austen*, 2 Dr. & S. 129.

(b) As to the Ordnance Survey, see *ELPH. INTROD.* 91.

descriptions & measurements do not accord with the present state of the property, as shown in the plans & plan.

v. VARIOUS alterations have taken place by the removal of fences, enclosures, change of names, & otherwise, the vendors shall not be required to identify or connect any part of the property sold with the descriptions contained in any of the abstracted muniments, nor to account for any apparent variance as to quantity, abutments, or otherwise, nor to explain or reconcile any apparent differences in the abstracted descriptions, nor to distinguish the present or former copyhold part of any lot from the freehold part thereof, or the parts held under different titles.

Identity.
Various
stipulations

vi. ANY misstatement or omission in the plans shall not annul the sale, & as the premises may be viewed, such misstatement or omission, if discoverable by inspection, shall not be the subject of compensation, but if the same be not so discoverable a reasonable abatement or compensation shall be made, &c., see GENL CONDITIONS, pp. 241, 242.

Misdescription.

X.

RESERVATIONS (c).

i. THE sale [of lot —] is subject to a right of way, road, or passage [of the width of — feet] for all purposes, *or* “for foot passengers,” *or*, “for the owners & occupiers of lot — & their families & servants, & others, with or without horses & other animals, carts, carriages, & other vehicles,” *or*, “for the purposes for which the same is now used,” *or as the case may be*, to be reserved or granted to the vendors, *or* “to the purchaser of lot — if sold, or if not to the vendors,” between the points marked A & B on the plan, *or*, “to & from lot — as shown in the sale plan,” & the conveyance shall be framed accordingly, [& in case of difference as to the mode of effecting such reservation or grant the same shall be settled by the vendors’ counsel].

Right of
way.

(c) See also CONVEYANCES ON SALE, PARCELS AND RESERVATIONS. As to the power of limited owners to sell subject to reservations, see the Settled Land Act, 1882, s. 4 (6), s. 17 (1). For a form of reservation to the vendor of the right to build on adjoining land so as to exclude any implied grant of an easement of light, see CONTRACTS FOR SALE, p. 348

As to sales
subject to
reservations.

Sale of
surface
without
mines (a).

II. THE vendors reserve to themselves the mines, beds, & quarries of coal & ironstone, & other metals, stone, & minls within & under the whole of the ppty, with all necy or pper powers, rights, & easemts for searchg for, winng, workg, gettg, & carryg away the same whether by underground or surface workgs, [but not so as to let down the surface whether built upon or not], pper compenson being pd to the pchasers for all damage done to the surface or the bldgs thron, & for the occupon of the surface in or about the exercise of such rights & powers (b) ; & subjt to the obligon on the pt of the vendors to restore the surface when the mines or minls shl have been worked out, or permanently ceased to be worked, & the convces shl be framed accdly [& in case, &c., *as in last form*].

The same.
Another
form.

III. THE coal & ironstone & other mines & minls (except only marl, gravel, & sand wch can be got witht going under or passg through any seam or vein of coal or ironstone) are reserved out of the psnt sale, with full power for the vendors & all psons claimg under them to sink any pits or shafts, or to erect or construct any bldgs, engines, machy, roads, tramways, waterworks, waterways, airways, or other works or conveniences necy or desirable for the ppose of gettg, workg, carrying away, convertg, or disposg of such mines & minls, or for any ppose connected thwith, & to stack & lay up any minls & refuse wch may be raised out of any such mines, makg all reasble compenson to the surface owners & occupiers for the time being for such damage as may be done in the course of gettg & workg such mines & minls, & the convces shl be framed accdly [& in case, &c., *as in form I.*].

Right to
get in
crops.

IV. THE vendors reserve the right to gather in & sell the growg crops & fruits at any time bfe the pchaser is let into posson.

Right to
use drains.

V. THE vendor reserves the right to use for the drainage and

As to sale
of surface
without
mines.

(a) As to the right to support, see STEPHEN ON SUPPORT, *Love v. Bell*, 9 App. Cas. 286 ; *Bell v. Earl Dudley*, 1895, 1 Ch. 182. Trustees with power of sale may sell the surface without the mines, Trustee Act, 1893, repealing and by s. 44 re-enacting 25 & 26 Vict. c. 108 (passed in consequence of *Buckley v. Howell*, 29 Beav. 546). This provision is extended to any person having power of sale by the Trustee Act, 1894, s. 3 ; and to sales under the Settled Estates Act, 1877 (40 & 41 Vict. c. 18), s. 19.

(b) As to the condition for compensation being enforceable against the assignees of the vendors, see *Aspden v. Seddon*, 1 Ex. D. 496.

sewerage of his adjoining ppty, and any future bldgs thereon, all (if any) drains & sewers in or under the ppty sold & at psnt used for the ppses afsd.

XI.

RESTRICTIONS *as to* BUILDING, MAINTENANCE of ROADS, &c. (c).

I. THE sevl lots [*or*, Lots — to — inclusive] are sold & will be conveyed subjt to the followg condons & stipulons for

Sale sub-
ject to
restrictive

(c) It may be taken as now established that at law the burden of a covenant between vendor and purchaser as to the user, &c., of land (unless operating as a grant), never runs with the land so as to affect a purchaser from the covenantor; *Austerberry v. Oldham Corporation*, 29 Ch. D. 750, where the previous authorities were fully examined; 1 Smith's L. C., notes to *Spencer's Case*, 9th ed. 104. But in equity a restrictive covenant (i.e., one of a negative or prohibitory nature, such as against building on the land or carrying on objectionable trades, &c.), as distinguished from affirmative covenants (such as to erect or maintain buildings), will be binding on purchasers (including of course lessees) taking with notice (*Tulk v. Moxhay*, 2 Ph. 774); which notice may be constructive only, as to which the law is not altered by the enactment as to constructive notice in the Conv. Act, 1882, s. 3, see sub-sec. (2); and such notice will be implied against a purchaser or lessee who neglects to make or debars himself by the contract from making the usual examination of title (which if made would have brought to light the restriction, *Patman v. Harland*, 17 Ch. D. 353; *Nottingham Brick Co. v. Butler*, 16 Q. B. D. 778; *Re Cox*, [1891] 2 Ch. 109). Negative covenants of this nature are not open to objection on the score of perpetuity (*L. & S. W. R. Co. v. Gomm*, 20 Ch. D. 562; *Mackenzie v. Childers*, 43 Ch. D. 265), nor as being in restraint of trade (*Catt v. Tourle*, 4 Ch. 654; *Earl of Zetland v. Hislop*, 7 App. Cas. 427; 2 Dart, V. & P. 865). It is proper that the covenant should in point of form be entered into by the grantee to uses or owner of the legal estate, and should be expressed to bind his assigns, though the obligation of the covenant as attaching in equity on future purchasers with notice does not turn on technical considerations such as this, but on the general intention as evidenced by the deed; see *Re Fawcett*, 42 Ch. D. 150, where the covenant was held to be merely personal, and therefore not binding on a subsequent purchaser.

As to the
burden of
restrictive
covenants
running
with the
land.

It has been suggested that section 62 of the Conv. Act, 1881 (by which the Statute of Uses was extended so as to enable easements and other rights in or over land to be created by way of limitation of the use, as to the need for which see 3 Dav. Prec. 1217, note), might possibly be made available as a means of converting a right under a restrictive covenant into a legal right, so as to be enforceable even against purchasers without notice; this

Suggested
expedients
for making
covenants
bind the
land.

stipulations.

the benefit & proton of the ppty sold & the adjoining este of the

experiment might be tried without harm, and possibly with success, since, according to the view of such covenants expressed by Jessel, M.R., in *L. & S. W. R. Co. v. Gomm*, 20 Ch. D. 583 (and see 2 Dart, V. & P. 863), if that enactment would apply to the case, the defence of "purchase for value without notice" could no longer be set up as a defence. Another suggestion which is stated (Challis on Real Property, 306) to have been acted on in practice, is that a long term should first be created burdened with the covenants, and then be enlarged into a fee under the Conv. Act, 1881, s. 65, so that the covenants may attach on the fee under sub-s. (4). This, however, though probably effectual, is somewhat cumbrous.

As to the benefit of such covenants.

As regards the devolution of the benefit of a restrictive covenant, it seems that at law it is necessary that the person claiming the benefit should be "in of the same estate" as the original covenantee, so that if that estate has been defeated by an appointment under an overriding power, the covenant could not be sued upon at law by the appointee (1 Smith's L. C. 89, referring to *Roach v. Wadham*, 6 East, 289), but that this technicality would not be regarded in equity where it is opposed to, and would defeat the manifest intention of the parties seems clear; such questions, however, should of course be avoided by making the covenant with the grantee of the legal estate in fee, so that the benefit of the covenant may go at law with that estate to all persons to whom it may pass, whether by conveyance or the Statute of Uses; and it is generally expressed to extend to the "heirs and assigns" of the covenantee though neither naming the "heirs," *Lougher v. Williams*, 2 Lev. 92 (except perhaps for the purpose of showing that the benefit of the covenant was to enure after the death of the covenantee), nor "assigns," Co. Litt. 385a, appear to have been necessary at common law. Those words may be omitted in reliance on the Conv. Act, 1881, s. 58. The property of the vendor for the benefit and protection of which the covenants are imposed should be defined; and even then it may be a question whether a subsequent purchaser from the vendor of all or part of the land retained by him is entitled to the benefit of the covenant unless such benefit was expressly included in his conveyance (*Renals v. Cowlshaw*, 9 Ch. D. 125, 11 Ch. D. 866; *Everett v. Remington*, [1892] 3 Ch. 148).

As to the right of other purchasers to enforce covenants.

The question whether contemporaneous or subsequent purchasers of parts of a building estate are entitled to enforce such covenants against other purchasers depends on the intention, which is to be gathered from all the circumstances in each case, as to whether the restrictions are imposed merely for the benefit and protection of the vendor himself (as in *Keates v. Lyon*, 4 Ch. 218, and *Renals v. Cowlshaw*, *ubi sup.*), or for the common benefit of the purchasers (as in *Mann v. Stephens*, 15 Sim. 377; *Western v. MacDermott*, 2 Ch. 72; *Coles v. Sims*, Kay, 56, 5 De G. M. & G. 1; *Nottingham, &c., Co. v. Butler*, 15 Q. B. D. 261; 16 Q. B. D. 778; see also *Martin v. Spicer*, 34 Ch. D. 1; affirmed *sub nom. Spicer v. Martin*, 14 App. Cas. 12, approving *Renals v. Cowlshaw*, *ubi sup.*; *Tucker v. Vowles*, [1893] 1 Ch. 195); see the statement of the law by Wills, J., 15 Q. B. D. 268, approved by the Court of Appeal (16 Q. B. D. 778), in *Nottingham, &c., Co. v. Butler*; and see also *Collins v. Castle*, 36 Ch. D. 243; *Re Birmingham, &c., Co.* [1893], 1 Ch. 342, where the vendor as to the unsold lots was held bound by the scheme, *Tyndall v. Castle*, W. N. 1893, 41; 2 Dart, V. & P. 865 *et seq.* The vendor in such a case may not be in a position to release or modify any of the

vendor in —, & the psnt & future owners, lessees, & tenants from time to time of such ppty & este, (a) namely :

a. (1) EVERY pchaser shl forthwith make & for ever maintain pper boundary walls or substantial [oak] fences on his lot on the sides marked — on the sale plan [of such height & design as shl be prescribed by the vendor].

Walls and
fences.

restrictive covenants stipulated to be entered into by the different purchasers (see *Western v. MacDermott*, 1 Eq. 499; *Martin v. Spicer*, *ubi sup.*; *Re Birmingham, &c. Co.*, *ubi sup.*) unless the right to do so is expressly reserved by the conditions, which may sometimes be desirable. As to the effect of a lot sold subject to such covenants being afterwards split, see *King v. Dickeson*, 40 Ch. D. 596. As to the vendor of an estate being bound by recitals contained in a deed of mutual covenants entered into by several purchasers, see *Mackenzie v. Childers*, 43 Ch. D. 265. As to the extinguishment of such covenants, by the alteration of the character of the estate, see *Duke of Bedford v. Trustees of British Museum*, 2 M. & K. 552; *Sayers v. Collyer*, 24 Ch. D. 180, 28 Ch. D. 103. As to restrictive covenants or conditions affecting copyholds on enfranchisement, see the Copyhold Act, 1894, repealing, and by s. 13 re-enacting with modifications the Copyhold Act, 1887, s. 8. As to the validity of a perpetual power of re-entry on breach of such a covenant, see *infra*, p. 306, note; and see generally, as to covenants of this nature, 1 Smith's L. C., notes to *Spencer's Case*, 87 *et seq.*

Tenants for life and other limited owners selling under the Settled Land Act, 1882, are empowered by s. 4 (6) to impose restrictions as to user by covenant, condition or otherwise either on the land sold or the land retained.

It is now settled that the doctrine of *Tulk v. Moxhay* applies only to negative covenants which may be enforced by injunction, and that an affirmative covenant (e.g., to maintain buildings), unless it amounts to the grant of an easement or rent or other estate in the land (as in *Rowbotham v. Wilson*, 8 H. L. Ca. 348), although it may be valid and binding for all time as against the covenantor personally and his estate after his death (see *Witham v. Vane*, *Challis*, R. P. App. V., pp. 401, 413, 419), is not enforceable as against purchasers from him, even with notice, by action either for specific performance or damages: *Haywood v. Brunswick Building Society*, 8 Q. B. D. 403; *L. & S. W. R. Co. v. Gomm*, 20 Ch. D. 562; *Austerberry v. Oldham Corp.*, 29 Ch. D. 750. This question being chiefly important in connection with sales on chief rent is considered *infra*, p. 305, in dealing with that subject.

As to
affirmative
covenants.

It has been decided, in *Guardians of Tendring Union v. Downton*, [1891] 3 Ch. 265, reversing 45 Ch. D. 583, that a charge for the expenses of street improvements by a local authority under the Public Health Act, 1875, is not an overriding charge on the whole proprietorship, and cannot be enforced by a sale of the premises charged free from restrictive covenants entered into by the owner as to building.

For a condition where the land is subject to restrictive covenants in a previous conveyance, see above, p. 276; and see also CONVEYANCES ON SALE.

(a) As to defining the property for the benefit of which the restrictions are imposed, see last note. It is often more convenient to insert the restrictive stipulations in the particulars of sale.

The same. *a.* (2) No wall or fence agst a road (except walls or fences
Limit as to now existg) shl exceed — ft — inches in height from the
height. surface of the road or footpath.

The same. *a.* (3) THE pchaser [of each lot] shl forthwith erect & for
Another ever after maintain at his own expse a good & sufft divon or
form. pty fence [consistg of a wall or oak park paling of not less than
5 feet or more than 7 feet in height] on the sides of the premes
[on one side of his lot] within the boundary line marked T on
the plan, & also a fence in front of & to septe the same from
the footpath of — road [the road or street adjacent thto as
shown on the plan], such last-mentd fence to consist of dwarf
walls with footgs of stone, or iron curb & iron palisadg, with
piers, gate piers, & gates, or of close park paling and swing
gates, agreeably to a [uniform] design, to be approved of by
the vendor [provd that if one pson pchases 2 or more adjacent
lots, it shl not be necy to make or maintain any divon or pty
fence or wall for the ppose only of separatg such lots from each
other]. In case any pchaser makes default in erectg or
repairg such fence or wall within — days after notice in
writg so to do shl have been given to him by the vendor, or left
for him on his land, the vendor shl be at liberty to erect or
repair the same at the expse of the pchaser, the amt whof shl
be pd on demand made or left as last afsd.

Buildings. *b.* (1) THE pchaser shl within — calr months from the
To erect date of his convce, at his own cost, & under the inspon & to
buildings the satisfon of the architect or surveyor of the vendor, erect &
of a uni- finish, in a good, substantial & workmanlike mner, upon each
form kind. of the plots of ground included in the sale to him, one dwg
house of the cost of £ — at the least, upon the same plan,
of the same form & dimensions, & after the like mner as
the houses now already erected on the east side of the road
coloured — on the plan.

The same. *b.* (2) ONE house only, at the cost of £ — at least, shl be
As to erected on each plot, such cost to be exclusive of any stablg &
number outbldgs.
and value
of houses.

The same. *b.* (3) EVERY pchaser shl within — months of the sale
Another erect & finish on his lot on the site coloured red on the sale
form. plan in accordce with plans & elevons to be approved by the
vendors or their surveyor, & for ever thrafter maintain in good
repair — substantial dwg houses with suitable outbldgs & con-

veniences of the value of at least £—— each, *or*, “of a clear yrly value for lettg or occupon of at least £—— each,” *or*, *if sale is on chief rent*, “of a total value of at least double the value calculated at 25 yrs’ pchase of the rent chged on such lot.”

b. (4) ONE house only, of the cost of at least £——, *or* two semi-detached houses only, of the cost of at least £—— each, and in all respts accdg to plans & elevons to be approved of by the vendor’s surveyor, shl be erected on the premes [on each of the lots nod. resply on the plan from —— to ——, both inclusive], but stablg or other outbldgs, accdg to plans & in situons to be approved of by the sd surveyor, may be erected on the premes [on any of such lots].

The same.
Another
form.

b. (5) No bldg or erection except the sd fence [a boundary fence not more than —— ft high, made of materials & of a design to be approved of by the vendor], shl at any time be erected on the premes [on any of the sd plots] within —— ft of —— road [any of the roads or streets marked on the sd plan].

The same.
Buildings
not to abut
on roads.

b. (6) THE front wall of any house or bldg to be erected on any pt of the premes shl range & be in a line with the bldg line marked on the plan, and no bldg or erection of any kind exceptg verandahs, porches, bay windows, or similar structures (a), to be approved of by the vendor’s surveyor, & exceptg such boundary fence as afsd, shl be erected on any portion of the premes [of any plot] wch lies betn the bldg line & any of the roads or streets marked on the sd plan.

The same.
To keep
building
line.

b. (7) THE line of frontage of the bldgs on the respive lots shl not approach nearer to any of the roads than the line marked “bldg line” upon the plan exceptg porticoes & bay windows or other similar structures, wch shl not project more than —— ft beyond such line, & no bldg other than walls & fences under 7 ft in height shl be erected nearer to any of the roads than —— ft.

The same.
Another
form.

b. (8) No temporary bldgs of any kind shl at any time be erected on the premes [any plot], other than sheds & workshops to be used only for works incidental to the erection of permanent bldgs thron.

The same.
As to
temporary
buildings.

(a) See *Lord Manners v. Johnson*, 1 Ch. D. 673.

The same. **Not to erect buildings, except private dwelling-house.** *b. (9)* No [permanent] bldg shl be erected on the premes [any plot except the plot nod. — on the sd plan] except a private dwg house & the stablg, offices, & outbldgs thof, & no bldg erected thron shl at any time be used except for the pposes last afsd.

The same. **As to cost of build-ings.** *b. (10)* For the pposes of these condons [regulons] the cost of every house & other bldg shl be taken to be the net first cost thof, in labour & materials alone (exclusive of ornamental fittgs) to be estimated by the sd surveyor at the lowest current prices.

The same. **Plans to be approved by vendor.** *b. (11)* No dwg houses or other bldgs shl be erected on any lot unless the plans, drawgs, & elevons thof shl have been previously submitted to & approved of in writg by the vendor.

The same. **Another form.** *b. (12)* No new bldg & no addon to any existg bldg shl at any time be erected on the land, except in a position & accdg to plans & descriptions to be previously approved in writg by the steward for the time being of the manor of —, or in case such manor shl cease to exist or shl come to be held by an owner other than the vendor or his descendants, then by the surveyor for the time being of the Local Board or correspondg public authority of —, but such approval shl not be withheld unless the erection of such new or addonal bldg shl have the effect of materially obstructg views now enjoyed from other ppties in the manor, or lesseng the amenity of such ppties by being unsightly or inappropriate to the site eir in respt of position, size, or value. A reasble fee, not exceedg — guineas may, on each occasion, be chgd by such steward or surveyor for his trouble.

Hoardings (a). *b. (13)* No hoardg shl be erected on any plot for advertisemts not relatg to the sellg or lettg of such lot.

As to yards or gardena. *c.* No dwg houses shl be erected on any pt of the land so as to stand back to back, witht yards or gardens of a depth of at least — ft interveng betn them, nor with their backs abuttg on any street.

Windows, &c. *d. (1)* No windows, lights, doors, or opengs shl be placed on the — side of any bldgs erected on the land.

The same. **Another form.** *d. (2)* No opengs, lights, or windows shl be put in any bldg or wall already erected or hrafter to be erected on the

(a) See *Foster v. Fraser*, [1893] 3 Ch. 158.

land, so as to give or open upon the adjoining ppty within a distance of —— ft thfrom.

d. (3) FOR protectg the privacy of the house & premes now in the occupon of the vendor, no window or openg shl at any time be made on the south or east side of any bldgs wch may be erected on the land now sold so as to overlook such house & premes, or any pt thof.

The same.
For secur-
ing privacy
of vendor's
premises.

e. (1) THE walls to be erected on the —— sides of lots —— as shown on the sale plan shl, for the entire length thof, be pty walls built as to one half thof on the land of ——, & as to the other half thof on the adjoining land of ——, & shl be —— inches thick up to a height of —— ft, & —— inches thick above that level, & shl be erected by & at the cost of ——, but shl be the jt ppty & exist for the jt benefit of the owners of the bldgs separated thby, who shl resply have all the rights & be subjt to all the obligons incident to owners of adjoining bldgs separated by pty walls (b).

Party-
walls.

e. (2) ALL main or boundary walls or fences betn the premes sold & the adjoining ppties wch now are jt or pty walls (b) or pty fences, shl continue to be such, & shl be so used, repaired, & maintained.

The same.
Another
form.

e. (3) THE gable & wall on the —— side of the house, into wch the main timbers of each immedly adjoining house are laid or inserted, and the walls in the rear & front by wch each such house & the land set apart & appropriated for each house so adjoining are separated, shl at all times hrafter be considered as pty walls (b) with all the rights & privileges that attach thto.

The same.
Another
form.

f. (1) No bldg to be erected on any of the lots [except lots —— & ——] shl at any time hrafter be used for any other ppose than a private dwg house or a coach-house & stables & outbldgs belongg thto; & no trade, manufacture, or business of any kind [except that of a solicitor, surgeon or physician] shl at any time be set up or carried on in or upon any of the lots [except as afsd].

As to user
of pre-
mises.

f. (2) NEITHER the land nor any existg or future bldg thron

The same.
Another
form.

(b) If appropriate, add: "that is to say, walls of wch the adjoining owners for the time being are tenants in common." As to the ambiguity of the phrase "party walls" without explanation, see Elph. N. & C., Interp. 606.

As to party-
walls.

shl be used for carrying on any trade or business, nor as a school, hospital, or public institon or charity, nor for holdg public meetgs, nor for public worship, nor orwise than as a private dwg house, but this shl not preclude the reception of lodgers or boarders, nor the carrying on of a learned or artistic profession witht other outward indicon thof than a brass or other plate or inscription coverg the space of not more than 2 feet by 1 foot.

The same.
Another
form.

f. (3) THE premes or any bldg thron shl not [None of the lots or any bldg thron shl] at any time be used for the ppose of any trade, manufacture, or business (*a*) of any description, or anythg in the nature thof, or havg the appearge or show thof, or as an asylum, hospital or other charitable institon, or by any public body or society, or as a chapel or school, or as tea-gardens or an hotel, public-house, or tavern, or for the sale of beer, wine, or spirits, or as a place of public amusemt, entertainmt, or resort.

The same.
Another
form.

f. (4) No hotel, tavern, tea-gardens, manufactory, mill, gasworks, hospital, asylum, or shop (*b*) shl at any time be erected, opened, or carried on upon any of the lots, & no spirituous or fermented liquors shl be sold in or upon any of the lots, or in any bldg to be erected thron.

The same.
As to plot
reserved
for hotel.

f. (5) THE plot nod. — on the plan, wch has been set apart for an inn, hotel, or public-house, shl not be used for any other ppose, except that, with the licence in writg of the vendor, the same may be converted into a private dwg house: *add provons as to plans, costs, &c., see above forms.*

The same.
Not to
carry on
offensive
trades, &c.

f. (6) NONE of the lots or any bldg to be erected thron shl be used for any offensive, noisy, or dangerous trade, business, pursuit, or occupon, or any ppose wch shl or may be or grow to be in any way a nuisance, damage, grievce, or annoyce to the vendors, their hrs or assns, or their tenants, or to the owners or tenants of any of the adjoining ppty or the neighbour-

(*a*) As to a charitable institution, from which no profit is derived, being included in the term "business," see *Rolls v. Miller*, 25 Ch. D. 208; 27 Ch. D. 71.

Objection-
able trades.

(*b*) The enumeration of particular objectionable trades, &c., though common, is necessarily not exhaustive, and if general words are added, as in form *f.* (6), there may be some risk of the *ejusdem generis* doctrine being applied; see *Jones v. Thorne*, 1 B. & C. 715.

hood, or wch may tend to depreciate or lessen the value of the afsd este of the vendors, or any pt thof, as a residential ppty (c).

f. (7) No bricks or tiles shl at any time be made, nor any clay or lime burnt on the premes [on any lot], & no operative machy shl at any time be fixed or set thron, or in any bldg to be erected thron, & no manufacture or operons of a noisome, offensive, dangerous, or noisy kind shl be carried on in or upon the same, nor shl anythg be done thron wch may be or grow to be a nuisance or annoyce to the vendor or his tenants, or the neighbourhood.

The same.
Another
form.

g. Lots — are sold subjt to the obligon on the pt of the pchasers to leave open & unbuilt upon a passage or space — ft wide as shown on the sale plan, & each pchaser shl pay one-half of the cost of formg, sewerg, pavg, completg, repairg, & maintaing such passage, so far as the same is co-extensive with his lot.

To form
passage.

h. (1) EVERY pchaser shl, accdg & in proportion to the extent of his frontage towards the projected street or road delineated in the plan, contribute, with the owners for the time being of the other lots comprd in this [& a former] sale & havg such frontage, to the expse of makg & formg the sd projected street into a road pperly metalled & fit for carts, waggons, & carriages, with a flagged footway — ft wide on each side thof, & with a cover for the watercourse at the side thof, & such main sewers or drains under the same as shl be required to be made by the Local Board or other competent authority [or, pper main sewers or drains under the same at the lowest level that can be made in order to obtain a suitable & sufft fall], & shl at all times thrafter until the same shall be adopted as a public highway, contribute in the proportion afsd towards the expse of repairg & maintaing the same street or road, a right of way over wch is included in the sale of each lot [& the sd sewers or drains].

As to
making
and main-
taining
roads.

h. (2) EACH pchaser shl, at his own expse, level, form, & pave one equal half pt in breadth of the said street intd to be

The same.
Another
form.

(c) That this condition, which is meant to extend to "annoyances," though not constituting nuisances in law, and whether they affect the vendor and his tenants or strangers, will be effectual, see *Tod-Heatly v. Benham*, 40 Ch. D. 80.

Annoy-
ances,
though not
nuisances
at law.

called —, so far as the same shl be co-extensive with his lot, & shl also pave with flags a footpath of the breadth of — ft in front of all bldgs to be erected on & co-extensive with his lot, & shl for ever thrafter maintain such half pt of the sd road & the footpath adjoining the same in good repair & condon until the same shl be adopted as a public thoroughfare.

The same.
Another
form.

h. (3) THE pchaser [The owner or owners of each lot] shl at all times hrafter when required by the vendor, pay to him or contribute an equal or proportionate share with the owners of the other houses & land [plots] adjoining the [intd] roads marked on the sd plan, accdg to the extent of their respive frontage to such respive roads [*or*, accdg to the prices pd by them for their respive plots], of the expse of [makg] repairg, cleansg, & maintaing, to the satisfon of the vendor, the sd roads & pper sewers & drains under the same, & all other expses connected thwith, until the same resply shl be adopted by & taken into the chge of the parish or local authority [such share or proportion in case of dispute to be settled by the surveyor for the time being of the vendor].

The same.
Another
form.

h. (4) THE pchasers of the plots nod. — to — inclusive on the sd plan shl, at their jt & equal expse, forthwith make & for ever after maintain the road marked — on the sd plan, & shl, at the like expse, curb, flag, & maintain the footpath on the side thof, of — ft wide as marked on the sd plan, & such road & footpath shl be for the exclusive use of the owners of the sd plots & their friends, visitors, servants, & others going to or coming from the houses to be built on the sd plots, & shl not be dedicated to the public witht the consent of the owners of all such plots, & no waggon or heavy cart shl be allowed to pass over the sd road, except betn the hours of 6 & 10 in the forenoon.

As to
making
sewers, &c.

i. THE vendor shl be at liberty at any time to lay down & construct sewers, drains, & water-pipes on any of the lots, & to keep in repair & maintain the same for the genl convence of the este.

Trees and
shrubs not
to obstruct
view.

j. No trees or shrubs shl be allowed to grow upon the land to such a height or density as materially to obstruct views at psnt enjoyed from any other ppties in the sd manor, *or as the case may be.*

k. No stone shall be quarried on or from the land except for the purpose of preparing for authorised bldgs, or of laying out or adapting the ground as garden or pleasure ground.

As to
quarrying
stone.

l. No sand or gravel shall at any time be excavated or dug out of the land [any of the lots] except for the purpose of laying the foundations of the houses or outbuildings to be erected thereon, or for use in erecting such bldgs, or in the gardens or grounds thereof.

As to sand
and gravel.

m. The vendor shall have liberty to nail fruit trees & plants against any fence [or, wall] which may abut on his land, he, at his own expense, repointing such wall on the side next to his land when necessary.

As to train-
ing fruit
trees.

n. The sale & conveyance of each lot will include the moiety abutting thereon of the site of the proposed road & footpath fronting the same, together with the right to use, in common with all other persons having a right to do so, the roads or intended roads & footpaths delineated in the plan in the courses there shown, but without any right on the part of the purchaser to require the provision of or make any objection or requisition in respect of the title to any of the said roads or projected roads, except the part comprised in his lot, & each conveyance shall be made subject to an exception or reservation of a right of way for the vendors & other persons at all times & for all purposes to the other property now offered for sale & adjoining any part of such roads or intended roads & footpaths respectively, & of the rights necessary for making & completing the said roads & footpaths or incidental thereto, & of the right of making sewers, laying water-pipes, gas-pipes & subterranean conductors of electricity, & otherwise using such roads & footpaths in the manner & for the purposes in & for which public roads or ways in towns are commonly used; & each purchaser shall, in his conveyance, covenant with the vendors, within ——— calendar months, at his own expense, & with proper materials, & in a proper manner, & to the

Provision
as to roads
and foot-
paths
where the
sites are
included in
the convey-
ances (a).

(a) In order to secure to the vendor the full control and proprietary rights over the roads, it is sometimes better to exclude them from the sale, as in the following form:—"The sites of the streets or roads or intended streets or roads, as shown on the sale plan are not included in the sale, but are to remain vested in the vendor, subject to the necessary rights of way & drainage over or through the same, & the sewers to be made thereunder which are to be sold to the purchasers, & the conveyances shall be framed accordingly."

Sites of
streets, &c.,
excluded
from sale.

satisfaction of the vendors' surveyor, to make & form into a road & footway, fit for traffic, such pt of his lot as is shown in the sd plan as pt of a projected road, & until such road & footway shl be adopted by the parish, or local authority, to keep in repair & maintain, fit for the traffic usually passg over the same, the portion thof included in his convce, or to contribute a due proportion, accdg to his frontage, of the cost of the repairs & maintce thof, but the vendors will not enter into any covts or agrmts with the respive pchasers as to the sd roads or intd roads & footpaths, & shl not be bound to enforce or effectuate the above condons or the liabilities mentd thrin further or orwise, than by compellg every such convce to be made subjt as afsd [and the vendors shl be entled to a duplicate of each convce to be prepared & exted by & at the expse of the pchaser] (a).

Restrictive covenants to be entered into by purchasers on sale in lots.

III. As regards every lot, in respt of wch restrons or liabilities are by these condons or the parlars imposed on the pchaser in regard to the erection of bldgs, the makg & maintaing of roads or fences, the user of the ppty, or orwise, the assurse of such lot (b) shl contain full & pper covts to be entd

(a) See note, p. 244.

(b) The following form (or form iv., *infra*) restricting the personal liability of the purchasers under the covenants to the period of their ownership (*Williams v. Hathaway*, 6 Ch. D. 544), may be substituted here, and it is perhaps preferable, especially as the liability to enter into unrestricted covenants (to which the vendor would be entitled in the absence of express stipulation; *Pollock v. Rabbits*, 21 Ch. D. 466) might be an obstacle in the way of trustees purchasing :

Provision restricting personal liability of purchasers under covenants.

“Shl contain all such reservons, covts, & provons as the vendors' counsel shl deem necy or pper for givg effect to such restrons & liabilities, & ensurg that the obligon thof shl at all times hrafter devolve with the ppty sold, & be bindg on the pchasers, & all future owners & occupiers thof, but such covts & provons shl be framed so as not to impose on the respive pchasers & their hrs, exs, & ads resply any psonal liability, after their respve este or intt in the ppty shl have ceased or determined.”

The following is a form where the obligations involve money payments; see as to this, *infra*, p. 305, note (f).

Form making money payments a charge.

“The due pformce & observce of the obligons to wch each lot is subjt as afsd, shl be secd to the vendors' reasble

into by & at the expse of the pchaser, framed so as to bind his repves & assns, with the vendors, their hrs & assns, the owners from time to time of the — este, & provons for securg the observce & pformce of such restrons & liabilities (the form of such covts & provons to be settled in case of dispute by the vendors' counsel), but the vendors shl not be bound to enforce, &c., as in form II.

IV. EACH pchaser shl in his convce enter into a pper covt framed so as to bind his repves & assns [but limitg the psonal liability thrunder to the period of ownership] with the vendors, their hrs & assns, the owners from time to time of the — este, to observe the stipulons mentd in the parlars relatg to bldg & other mres: AND the vendor shl be entled to a duplicate of each convce to be prepared by & at the expse of the pchaser (c).

The same.
Another
form re-
ferring to
particulars.

v. To show distinctly to intendg pchasers the nature of the covts & clauses wch the vendors will require to be inserted in the sevl convces, a genl form of convce has been prepared, & may be inspected at the office of the vendors' solor for — days previously to, & will be produced at the sale, & every pchaser shl be deemed to have full notice of all the clauses & provons of such form, & to have consented thto, & shl take his convce in accordce thwith, with such modifcons, if any, as the special circes of his lot or lots may render necy: AND any pchaser may, upon applicon to the vendors' solor, have a copy of the sd form on paymt of — shillings for the same.

The same.
General
form of
convey-
ance.

VI. EACH pchaser shl, simultaneously with the exon of his convce, exte a genl deed of covt, to be prepared by the vendors' solors & retained by them (notice of wch shl be endorsed on the convce), contg covts on the pt of the pchaser, framed so as to bind his repves & assns, for securg the

The same.
By a gene-
ral deed of
covenant
(d).

satisfon by a pper covt to be entd into by the pchaser with the vendor, or other pper provons to be inserted in the convce, & as regards any moy paymts by reservg the same as rent, or orwise makg the same a chge on the lot, so that such obligons may be bindg on & enforceable agst the pchaser & his successors in title."

(c) See note, p. 244.

(d) See *Whatman v. Gibson*, 9 Sim. 196.

observe & perform by him & them & the owners, lessees, & occupiers for the time being of his lot, of the aforesaid restrictions & conditions: But the vendors shall not be bound to procure the concurrence of all the purchasers in such general deed, & the completion of the purchase of any lot shall not be delayed by reason of the non-sale or any delay in the completion of the sale of any lot.

As to mutual rights of purchasers in respect of restrictions imposed on them.

VII. No purchaser shall be entitled to any covenant or engagement from any other purchaser or the vendors or any other person in respect of any of the restrictions & liabilities mentioned in the foregoing conditions or particulars as affecting, or intended to be imposed upon, any other lot, whether such lot is sold or remains unsold: AND the vendors reserve the right to waive or modify the restrictions or liabilities mentioned as affecting or imposed on any lot in any manner which may be agreed upon between the vendors & the purchaser of such lot (a).

As to lots not sold.

VII. If any lot shall not be sold at the present sale the vendors shall for the purpose of the above conditions stand in the place of the purchaser thereof.

Provision for lot not being sold (b).

IX. If any lot shall not be sold at the intended sale the vendors & all persons claiming under them shall in respect of such unsold lot have the same easements & rights over or against the sold lots, & the purchasers of sold lots shall have the same easements & rights over or in respect of such unsold lot as if all the lots had been sold at such intended sale.

Restriction of right to light, &c. (c).

X. THE respective purchasers shall not be entitled to any right of light or air which would restrict or interfere with the free use of any adjoining or neighbour lot for building or other purposes, & the covenants shall expressly exclude the grant of any such right.

Power to alter building scheme (d).

XI. THE scheme of roads, building lines, & other matters, as shown in the said plan, & the building & other restrictions imposed upon purchasers shall not be binding on the vendors, & they shall be entitled to vary or alter the same as regards any lot or lots the sale of which may not be completed pursuant to the present sale by auction, or as regards any lots which may be put up & sold together.

(a) See above, p. 286, note.

(b) This condition seems desirable on a sale in lots, having regard to *Wheeldon v. Burrows*, 12 Ch. D. 31; see Elph., N. & C., Interp. 203.

(c) See *Wheeldon v. Burrows*, 12 Ch. D. 31; *Russell v. Watts*, 10 App. Cas. 590; *Beddington v. Atlee*, 35 Ch. D. 317; *Aldin v. Latimer*, [1894] 2 Ch. 437.

(d) See above, p. 286, note.

XII. If any question sh^l arise betⁿ diff^t pchasers, or betⁿ the vendors & any pchaser, as to the boundaries betⁿ any lots, the same sh^l be settled by the auctioneer, whose decision sh^l be final.

Boun-
daries.

XII.

CUSTODY of TITLE DEEDS *and* COVENANTS to PRODUCE (e).

I. No objon or requon sh^l be made on the ground of any covt, acknmt, or undertakg, for the prodon or safe custody of munimts of title being defective or insufft, or on the ground of the absce of any such covt, acknmt, or undertakg.

Insuffi-
ciency of
covenant
for produc-
tion (f).

II. As the munimts of title relate also to other ppty not included in the sale, they will be retained by the vendor, who will if required give to the pchaser a statutory acknmt of the rt to prodon & delivery of copies & undertakg for safe custody, *or, for tree or other fiduciary vendor,* "but witht any undertakg for safe custody" thof, to be prepared by & at the expse of the pchaser (g).

Where all
deeds
retained.

III. SUCH of the munimts of title in the posson of the vendor as relate exclusively to the ppty sold will be delivered to the pchaser. All other munimts in the posson of the vendor will be retained by him, & he will, &c., *as in form II.*

Where
some
retained.

IV. MUNIMTS of title in the posson of the vendor relatg to any of the ppty now offered for sale, & also to other ppty of

Sale in
lots where
deeds to be

(e) See the V. & P. Act, 1874, s. 2 (4, 5), and the Conv. Act, 1881, s. 9, and above, p. 227. As to the possession and production of deeds, see Elph., *Introd.* 108 *et seq.*, 33 Sol. J. 655, 670, 695, 706, 714.

(f) As to this condition, see p. 226.

(g) The following is sometimes added on a sale by private contract:—
"but to be perused on behalf of & exted by the vendor free of expse to the pchaser, & a memdum of the sale & of the sd acknmt and undertg sh^l be endorsed on one of the ppal deeds retained." Such a memorandum ought merely to state that certain land was sold to A., the conveyance ought not to be referred to, as if it is, inconvenience may arise owing to a subsequent purchaser of another part of the property from the original vendor having notice of a deed which the vendor cannot produce to him so as to show that it does not affect the property comprised in the subsequent sale.

delivered
to largest
purchaser
or to such
purchaser
as vendor
thinks fit.

the vendor, will be retained by him. Munimts (other than docs of record) relatg exclusively to any of the ppty offered for sale will, if relatg to one lot only, be delivered to the pchaser of such lot, but if relatg to more than one lot, will be retained by the vendor until the whole of the ppty to wch they relate shl have been disposed of (whether at the psnt or any (a) future sale) whrupon the same will be delivered to the largest pchaser in value of the lots to wch the same relate, or in the event of equality of pchase-moy to the pchaser of the first lot in order of sale of the lots in respt of wch the pchase-moy is equal, *or*, "will be delivered to such of the pchasers as the vendor may think fit." And the vendor will, if required, give to any pchaser a statutory acknmt of the rt to prodon & delivery of copies & undertakg for safe custody, *or, for tree or other fiduciary vendor*, "but witht any undertakg for safe custody," of any munimts retained by him (whether permanently or temporarily) under this condon (b).

The same.
Where
deeds to be
delivered to
purchaser
of a speci-
fied lot.

v. THE pchaser of lot 1 shl be entled to the custody of any deeds or munimts of title wch relate to that lot & also to any other lot or lots, & shl, if required, give to the pchaser of each of the other lots to wch the same relate, the usual statutory acknmt of the rt to prodon & delivery of copies, & undertakg for safe custody thof, to be prepared by & at the expse of the pchaser requiring the same. If lot 1 or any other lot is not sold, the vendor shl for the ppose of this condon stand in the place of the pchaser thof. Any delay in obtaing any such acknmt & undertakg as afsd shl not be a ground for delaying the complon of any pchase, but the acknmt & undertakg shl, in such case, be exted as soon after complon as the vendor shl be able to obtain the same.

On sale of
settled
property.

vi. SUCH of the munimts of title in the posson of the vendor or his trees as relate exclusively to the ppty sold [any lot] will be delivered to the pchaser. All other munimts will be

(a) If the vendor is under a similar contract with any purchaser at a former sale add here, "past, or."

(b) The old form of condition provided that the covenant for production should be given by the purchaser to whom the deeds were delivered, but there can be no objection to the statutory acknowledgment, &c., being given by the vendor before parting with them, as his liability ceases on his so doing.

retained by the vendor or his trees, & the purchaser shall be entitled to the proper statutory acknowledgment of the right to produce & undertake for safe custody of the muniments retained by the vendor & to a proper statutory acknowledgment of the right to produce but no undertaking for safe custody of the muniments retained by the trustees, such acknowledgments & undertakings to be prepared by & at the expense of the purchaser.

VII. As regards any deeds of title not in the possession of the vendor, whether the same are in the possession of his trees or other persons, the vendor shall not be required to give or procure from any person or persons any covenant for the production thereof or any statutory acknowledgment or undertaking in reference thereto, but the purchaser shall rely on his equitable right to produce. As to muniments not in vendor's custody (c).

VIII. In any case in which the vendor is under any obligation to any former purchaser for the production or safe custody of any muniments which are handed over to the [any] purchaser at the present sale, the latter purchaser shall take upon himself such obligation in exoneration of the vendor therefrom, & shall, if required, enter into a proper covenant of indemnity in that behalf, or give a proper substituted statutory acknowledgment & undertaking for production & safe custody to the person or persons entitled to the benefit of the original covenant, the deed or deeds for that purpose to be prepared by & at the expense of the vendor or covenantor, but the expense of the perusal & exoneration thereof by or on behalf of the purchaser to be borne by him. Provision for indemnity of vendor in respect of liability under former covenants for production (d).

XIII.

SALE of CHIEF RENTS.

I. THE title shall commence with a purchase deed in 18—, by which the rent-charge was created, or, “with a conveyance on sale of the rent-charge in 18—, & no earlier or other title thereto or evidence of the creation thereof shall be required.” Commencement of title.

(c) This can rarely be required, and is a very depreciatory condition.

(d) This of course only applies where the vendor has entered into an absolute covenant, his liability under which will continue after he parts with the deeds, according to the form formerly in use in the case of beneficial owners, which was more onerous than the statutory covenant.

The same.

II. THE title to the sevl lots shl consist of the duplicates of the respive deeds creatg the same, & the recent title thto resply commencg with the assurces thof resply to A., deced, dated as to lot 1 in 18—, &c., *or*, “the sevl assurces & will specified in the — column of the annexed table,” & the subseqt devolon of title [& a declon to be made at the expse of any pchaser requirg the same that such respive rents have been regularly pd to the respive psons appearg to be entled thto for the last — yrs], & no pchaser shl call for or make any requon or objon in respt of the intermediate title to any of such rents betn the date of the creation thof & the sd respive instrumts by wch the recent title commences.

Loss of duplicate deed.

III. THE duplicate deed creatg the rent formg lot — is lost. The pchaser shl not require the prodon of that deed or the duplicate thof nor any abstract or copy thof, nor any other evidce of the contents or exon thof beyond the recital contd in subseqt deeds (one of wch bears date as far back as 18—), nor make any objon or requon on this acct.

Form of reservation.

IV. No objon shl be taken as to the form in wch any rent was reserved.

Identity.

V. No further proof of the identity of the ppty on wch any rent included in the sale is chged shl be required than is afforded by the abstracted munimts & such other evidce (if any) as may be in the posson of the vendor. And no objon shl be takn in respt of any defect in such identificon.

Division.

VI. THE rents of £—— (comprisg lot —) & £—— (comprisg lot —), wch have been divided for the convene of sale, were origlly created as one rent of £——, & the pchasers of these lots shl not make any objon or requon in respt of such divon or of the origl rent not being legally apportioned as agst the owners of the land.

Indemnity against overriding rent.

VII. THE owner of the hds out of wch the rent-chge formg lot — issues, is entled to indemnity out of such rent-chge agst an overridg rent-chge of £—— wch was origlly chged on such hds togr with other ppty & agst certn covts & condons contd in the deed creatg such overridg rent. The pchaser shl take subjt to such rt of indemnity, & shl not require prodon of the deed by wch the overridg rent was created, or make any objon or requon in respt thof.

The same.

VIII. No objon shl be made on the ground that any of the

rents hereby offered for sale or the lands out of which they issue are or may be either alone or with other property subject to any overriding charge or ground rent or rents, & the purchaser shall not require any indemnity against any such overriding rent or rents other than such indemnity (if any) as is already existing, but shall be satisfied with a declaration to be made if required at the expense of the purchaser, that no claim has ever been made against the vendor or his predecessors in title in respect of any such rent.

IX. THE payment of the overriding rent of £—— mentioned in the particulars was by a conveyance of, &c., charged upon a rent of £—— (issued out of —— square yards of land, situate, &c., & now payable by X.) in exoneration of & by way of indemnity to the owners of lot —, the purchaser who shall not make any objection in respect of the said rent of £—— or the sufficiency of such indemnity. The same.

X. THE lands out of which the rents forming lots 1 & 2 issue, are subject together with the land forming lot 3 to an overriding charge rent of £——, & to certain powers of distress, entry, & receipt of rents & profits in relation thereto, but so far as regards the purchasers of those lots (or the vendors as to any lot remaining unsold), such overriding rent shall be charged exclusively on lot 3, the purchaser of which (or the vendors if it is not sold) shall enter into & grant proper covenants & powers of distress & entry & receipt of rents & profits for indemnifying the purchasers of lots 1 & 2 in respect thereof, to be prepared by & at the expense of such respective purchasers. The same.

XI. EACH purchaser shall on completion be entitled to the rent purchased by him, or to an apportioned part of any instalment thereof accrued due as from the day fixed for completion, & in case of such apportionment being necessary, shall pay to the vendor his proportion of such accrued instalment. Apportionment on completion.

XII. No objection shall be taken by reason of a part of the property on which the rent was originally charged having been subsequently acquired by or become vested in the then owner of the rent. As to unity of ownership (a)-

XIII. THE properties on which the rents included in the sale are Misdescription.

(a) It is a question whether such a partial unity of ownership would not extinguish the rent altogether; see *Co. Litt.*, 147 b, 149 b; *Dennett v. Pass*, 1 Bing. N. C. 388. Query whether equity would relieve, *Com. Dig. tit. Chy. 4, IV.*, 1 *Story's Equity*, pl. 475; *Slater v. Buck*, *Moseley*, 256, *Jud. Act*, 1873, s. 25 (4).

resp'y chged, are believed & shl be taken to be correctly descd, & no error, misstatemt, or misdescription in the parlars as to the ppty so chged, or as to the ownership of such ppty, shl annul the sale or be made a ground for any claim to compenson.

Amounts.

xiv. No pchaser shl make any objon or requon on the ground that the rent comprd in his lot is not always as to amt correctly stated in the sevl docs of title relatg thto, & the sevl sums specified in the parlars, wch are the amts of rents reced by the vendors for upwards of — yrs, shl be assumed to be correct notwg any such discrepancies.

XIV.

SALE on CHIEF RENTS for BUILDING (a).

Biddings.

i. THE pson offerg the best reserved yrly fee-farm rent for each lot (wch shl commce from the — day of —) shl be the pchaser.

ii. *Other usual condons as to biddgs, see p. 229.*

Deposit.

iii. EVERY pchaser shl immedly after the sale pay into the hands of the auctioneer a deposit equal to 1 yr's rent of his lot, wch sum will accdly on the complon of the pchase be allowed to the pchaser as a dischge from the first yr's rent: every pchaser shl also immedly after the sale sign an agrmt in the form subjoined.

Redemp-
tion (b).

[iv. THE fee-farm rent or rents payable by any pchaser may, if he so desire, be made redeemable on or bfe the — day of —, on paymt to the vendors, or the owner or owners thof, of a sum equal to 25 yrs' pchase thof, the expses of or incidental to such redmon to be borne by the pchaser.]

Tithes, re-
servation of
rent-charge
to vendors
in lieu of.

[v. EACH lot will be chged with an annl rent in lieu of tithe rent-chge to be reserved to the vendors & made payable half-yrly, wch rent is to be fixed by the auctioneer, but is not to exceed by more than one-tenth the amt of the tithe commuton

(a) Compare the form of contract for sale on chief rent at p. 322, *infra*.

(b) The provision in the Conv. Act, 1881, s. 45, for redemption of rent-charges, does not apply to rents reserved on sales, see sub-s. (5).

award. No purchaser shall require any apportionment of the tithe, or any further indemnity in respect thereof than the covenant in his conveyance by the vendors to pay the same (c).]

VI. *Condoms requiring each purchaser to erect & maintain one or more houses of minimum value, & impose other restraints, see pp. 288, 290.*

VII. THE rents reserved shall be made payable half-yearly on the — day of —, & — day of —, free from all deductions (e) whatever except property tax, & each conveyance shall contain covenants by the purchaser to pay the rents reserved on his lot or lots, & to keep the buildings to be erected on his lot or lots properly repaired [& insured] [& powers for the owner for the time being of the reserved rent or rents to enter & view the condition of the premises, & to enter on non-payment of such rent or rents or on breach of any of the purchaser's covenants or conditions contained in such conveyance, & specifically to perform such covenants or conditions on each occasion of entry, & to remain in possession & take the rents & profits of the land entered upon, until the rent or rents in arrear, & the costs & expenses incurred in the execution of such power shall be satisfied, *or, in lieu of such last power of entry,* " & an absolute power of re-entry on non-payment of such rent or rents or on breach of any of the purchaser's covenants & conditions contained in such conveyance "] (f). Conveyance (d).

(c) See *Re Ebsworth*, 42 Ch. D. 23.

(d) See also the form, *infra*, pp. 322—324.

(e) As to the effect of these words in exonerating the owner of the rent-charge from liability to land tax, see 3 Dav. Prec. 313, note.

(f) The efficacy of the provisions hitherto usually inserted in grants in fee on chief rent for securing the rent is very questionable, both as regards the covenants of the grantee for the maintenance of buildings, and the power of re-entry on breach of the covenants. The doctrine that the benefit of a covenant cannot run at law with a rent (*Milnes v. Branch*, 5 M. & S. 411; *Randal v. Rigby*, 4 M. & W. 130; *Haywood v. Brunswick Building Society*, 8 Q. B. D. 403; 1 Smith's L. C., 105), appears very unsatisfactory and difficult to uphold on principle, whether the rent is created by grant, so that the grantor is also the covenantor, or (as is much more usual) by reservation, so that the covenant is by the grantee (see Sug. V. & P., 591); and even if well founded, it could hardly prevail in equity, as a conveyance of the rent with the benefit of the covenants, whether expressed (as it should be) or implied, would enable the assignee, if necessary (which since the Judicature Act it probably would not be), to sue in the name of the covenantor or his representatives (see the parallel case of *Riddell v. Riddell*, 7 Sim. 529). An affirmative covenant, however, of the above nature (to spend money on the land) is precarious, As to covenant to maintain buildings, &c.

VIII. THE purchase shall be completed on the — day of — next, at the office of the vendor's solicitors, Messrs —, at —,

having regard to the doctrine, now settled, that it is not enforceable against the assigns of the covenantor, although with notice (*Austerberry v. Oldham Corporation*, 29 Ch. D. 750; see above, p. 285, note).

As to
powers of
re-entry
and distress
on breach.

It has also been held, that a power of re-entry on breach of a covenant if unlimited as to duration, is void as a perpetuity; *Dunn v. Flood* (25 Ch. D. 629; and see *per* Baggally, L.J., *ibid*, on appeal, 28 Ch. D. 592), where the covenant was a restrictive one (as to user of the land), and the power authorised the possession to be retained during the continuance of the breach, and for three months afterwards. That case can hardly be regarded as having finally settled the point, which did not in fact call for decision (see Challis on Real Property, p. 177); and it leaves open the question whether, if the power were strictly confined to abating or making good the breach (which, however, it now would be although in terms absolute, by the effect of the Conv. Act, 1881, s. 14, empowering the Court to relieve against forfeiture, see sub-s. 3), it would still be bad. It seems open to contention that a power so restricted, if annexed to a negative covenant (as in *Dunn v. Flood*), is not objectionable on the score of perpetuity, as the covenant itself is free from that objection (see p. 285, note), and the power is a mere adjunct for enforcing it. But in the case of an affirmative covenant, there would be more difficulty in maintaining this view; and a power of entry, whether absolute or qualified, cannot, in the present state of the authorities, be safely relied on (whether the covenant be affirmative or negative), unless restricted to lives in being and 21 years. It is conceived that it is enough if the power of entry is confined to lives in being, &c., and that the power to retain possession until the breach is satisfied need not be so confined, whether the entry would give the grantee an estate in the land or not; as to which see *Elph. Interp.*, p. 246. A power of distress on breach of such a covenant, would also apparently be open to the same doubt as to its being a perpetuity, and would possibly in addition be avoided by the Bills of Sale Acts of 1878 and 1882. So far as regards enforcing payment of the rent, the power of distress appears to be unimpeachable, as it may be conferred at common law, and if it is omitted a power of distress is given by 4 Geo. 2, c. 28, s. 5. Probably a power of re-entry unrestricted as to perpetuities is invalid (unless perhaps it is created on a grant for building purposes by a tenant for life) (see Settled Land Act, 1890, s. 9). The power of re-entry under the Conv. Act, 1881, s. 44, is not to be implied unless it might have been expressly conferred, therefore if an unrestricted power cannot be conferred, the statutory power which is in terms unrestricted cannot be implied.

As to
creation
of rent-
charge for
enforcing
covenants.

A mode which may be suggested is to create a further perpetual rent-charge issuing out of the land of the covenantor, by way of security for the performance or penalty for the breach of the covenants (see *per* Lindley, L.J., 29 Ch. D. 783) in a manner similar to that sometimes adopted for indemnifying a purchaser against a rent (see *infra*, INDEMNITY); such rent-charge remaining dormant until wanted, but if required to be enforced, carrying with it the usual remedies. Such a rent-charge, if limited so as to arise only on a breach of the covenants, is open to the same objection as a mere power of entry, as creating a perpetuity (the decisions to the contrary in *Gilbertson v. Richards*, 4 H. & N. 277; and

at wch time & place each pchaser shl be entled to a pper convce of his lot or lots, to be prepared by & at the expse of the pchaser (a), & the vendor shl be entled to a duplicate thof, if required, to be prepared by him at the pchaser's expse. *Add, if desired, condon as to genl form of convce, p. 297, No. V.*

XV.

SALES UPON OR SUBJECT TO CHIEF RENTS. MISCELLANEOUS CONDITIONS.

1. As to any ppty or lot wch is sold subjt to pt only of an entire chief or ground rent chged on the same, togr with other ppty of the vendors or any other lot or lots as mentd in the

Sale in lots, apportionment, and indemnity (b).

Morgan v. Davey, 1 Cab. & E. 114, being in effect overruled by *L. & S. W. Ry. Co. v. Gomm*, 20 Ch. D. 562). If the rent is made to take effect immediately, with a provision that the performance of the covenants shall be deemed a satisfaction of the rent, or that so long as the covenants are duly performed, the rent shall be held in trust to attend the inheritance of the lands charged, the result would, it is conceived, be the same, but see Lewis on Perpetuities, 612—631, and Suppl. 201. In either case the rent may effectually be made a security for breaches of covenant restricted as to perpetuities.

The plan of reserving to the rent-charge owner the right of specifically performing the covenants and recovering the cost, by limitation of the use under the Conv. Act, 1881, s. 62 (in the manner referred to above, p. 285), might be tried, in combination with the other mode above suggested, or otherwise; but the employment of that enactment for creating a right of a nature not before known to the law, must be regarded as a doubtful experiment. The other plan adverted to at p. 286, note, of creating a long term with the covenants annexed, to be afterwards enlarged into a fee under the Conv. Act, 1881, s. 65, might also be adopted, and seemingly with success. As regards the covenant to erect the buildings the limit of time does not usually exceed two years, so that there would probably be no practical difficulty in enforcing it: see *Andrew v. Aitken*, 22 Ch. D. 218; but sometimes the conveyance is not executed until the buildings are completed. As to the right to have the arrears of a rent-charge raised by sale, see *Re Tucker*, [1893] 2 Ch. 323; *Hambro v. Hambro*, [1894] 2 Ch. 564.

Other expedients for enforcing covenants.

It is not known how far the practice, as to the provisions for securing chief rents, has changed in consequence of the recent decisions above referred to; the above suggestions deserve consideration, but any machinery which tends further to complicate dealings arising out of the chief rent system, which are already sufficiently troublesome, does not much commend itself.

(a) The ordinary practice, that the conveyance should be prepared by the purchaser, ought not, it is considered, to be departed from in this case, as is the practice in some places.

(b) Where there are more than two parties to the arrangement it is

parlars, the pchaser or respive pchasers of the lot or lots subjt thto & as regards any unsold pt of the ppty so subjt the vendors shl by a separate deed enter into mutual covts for paymt of the respive portions of such rent wch are to be borne & pd by them resply as specified in the parlars, & for the indemnity of the other or others of them & his or their respive portions of the ppty in respt thof, such indemnity if required to be supplemented & further secd by an express chge upon & by the grt of powers of distress & entry upon & rect of the rents & profits of the ppty or lot by or out of wch the respive apportioned pts of such rent are to be borne & pd, or (at the option of the pson entled to the indemnity) by the creation of a new rent eql in amt to such respive apportioned rent to be chged upon & issuing out of such ppty or lot & to be limd or grted to the pson entled to the indemnity. The deed or deeds of indemnity shl be prepared & engrossed by the solors of the vendors in as many pts as there are pties thto at the jt expse of such pties, & such pties (other than the vendors) shl also pay the chges of their own respive solors in relon thto, but any delay in the preparon or exon of such deed shl not be a ground for delaying the complon of the pchase of any lot.

The same.
Fuller form
with varia-
tions.

II. Lots 1 & 2 are subjt under one convce to an entire chief rent of £15, & lots 3, 4, & 5 are subjt under one convce to an entire chief rent of £20, & each of such lots is sold subjt to such apportioned pt of the chief rent affectg the same as is to be borne by such lot as stated in the parlars & to the covts & provons contd in the deed creatg the chief rent so far as they affect such lot. No legal apportionmt however of such respive chief rents has been or will be made ; but the pchaser of each of such lots if sold separately from the other lot or lots held under the same convce shl, if required, enter into covts with the pchaser or each pchaser of the other lot or lots held under the same convce for the paymt & indemnificon of such other pchaser agst the proportion of the chief rent affectg his lot, wch is to be borne by him, & for the observce & pformce of &

better to have a separate deed of indemnity as is here provided. The validity of powers of entry and distress for securing such an indemnity seems open to the same doubts as the like powers for securing building covenants in conveyances on chief rents ; see p. 306, note, as to this, and as to the creation of a new rent.

the indemnificon of such other pchaser agst the covts & provons contd in the deed creatg the chief rent so far as they affect his lot, & shl also, if required, *add provon for further indemnity by an express chge & by grt of powers of distress & entry or creation of new rent, as in last form.* Every such deed of indemnity wch may be required by any pchaser shl be prepared by & at the expse of the pchaser requirg the same, & exted by the pchaser or pchasers givg the same at his or their own expse, *or, "every such deed of indemnity shl be prepared by the vendors' solors in such form as they may think fit, & be exted in duplicate or triplicate (as the case may require) by each pchaser of a lot held under the same convce, & the expse of preparg & extg such deed shl be borne by the respive pchasers extg the same in eql proportions."* If any lot held under the same convce shl remain unsold the vendors shl, for the pposes of this condon, stand in the place of the pchaser of the unsold lot, but the covts of the vendors shl be framed so as to restrict their psonal liability to the period of their ownership of such unsold lot, *or, "but the vendors shl not be required to enter into any covts."*

III. Lots — are subjt to a chief rent of £ —, created by a deed, &c., & to certn covts & condons contd in that deed. Such rent shl be borne as to £ — by lot —, & as to £ — by lot —, *or, "shl be apportioned betn the sd lots as stated in the parlars,"* & the apportionmt shl be carried out by mutual covts for paymt & indemnity, with (if required) an express chge & powers of distress & entry or the creation of a new rent for enforecg & securg such paymt & indemnificon, & any question as to the mode of effectg the same shl be settled by the vendors' counsel, & no legal or other apportionmt shl be required to be made. Each lot will also be sold subjt to the sd covts & condons so far as the same relate thto.

IV. Lots 1, 2, & 3 are, with other ppty of the vendors, subjt to a yrly rent of £ —, the whole of wch is to be borne by lot 1, & that lot will be conveyed subjt to the paymt of such rent in exoneron of the other lots & ppty liable thto, & the pchaser of lot 1 shl, at his own expse, enter into a covt with the pchasers of the other lots & also with the vendors as to such other ppty & as to any lot remaing unsold for paymt & indemnificon agst such rent, *or, "shl indemnify lots 2 & 3 &*

The same.

Short form.

Sale in lots.

Entire rent
to be borne
by one lot.

the owners thof & the vendors agst the sd rent & all incidental expses by extg & deliverg to the pchasers of those lots & to the vendors on the complon of the pchase a pper deed of covt in that behalf [contg, if required, an express chge upon & powers of distress & entry over lot 1, or a limon of a new rent of eql value with the sd origl rent to be chgd upon that lot in favour of each of such pchasers & the vendors for securg paymt of the sd origl rent & all expses occasd by non-paymt thof] (a), such deed of indemnity to be prepared by & at the expse of the pchaser of lot 1, & in case of diffce to be in such form as the vendors' counsel shl approve, & the pchaser of lots 2 & 3 shl be satisfied with such indemnity," or, "but the pchasers of the other lots shl not require any indemnity in respt of such rent."

Indemnity
on sale in
lots against
rent not
actually
paid.

v. THE pchasers shl be precluded from requirg any informon beyond what is afforded by the abstracted docts resptg a rent-chge of £—— p.a., which is stated to have been chgd on the ppty in the yr —— for a charitable ppose, but wch is supposed not to have been pd or claimed for many yrs. The liability (if any) to this rent-chge shl be assumed by the pchaser of lot —— in exoneron of the other lots, & such pchaser shl, if required, join in the convces of the other lots (at the expse of the respive pchasers requirg the same) in order to covt for their indemnity agst the sd rent-chge, & the pchasers of the other lots shl be satisfied with such covt, & shl not require any other indemnity agst the same, & inasmuch as the vendors have entered into covts with the pchasers at a former sale of ppty held under the same title for their indemnity agst the sd rent-chge, the pchaser of lot —— shl also indemnify the vendors agst such covts, such respive indemnities to be prepared by & at the expse of the respive psons entled to the benefit thof.

(a) Sometimes a lot entitled to be indemnified against an overriding rent is charged with a rent payable to the owner of the lot charged with the indemnity; in that case add:—

Power to
retain rent,
as indem-
nity.

"And also a power to the, *pson entled to be indemnified*, his hrs & assns, to retain out of the sd rent-chge of £——, any moys wch he or they may be called upon to pay, & shl pay in respt of the sd overridg rentchge of £——, & any expses incurred by him or them in conseqce of the non-paymt of such last-mentd rent-chge."

In the event of any lot or lots not being sold at the psnt sale the vendors shl stand in the place of the pchaser or pchasers thof for the ppose of this condon.

VI. Lots — are or were formerly subjt with other ppty to a yrly rent of £——, but wch is not pd by the vendors. The respive pchasers shl be satisfied with this statemt, & shl not require any indemnity in respt of such rent or any further informon in relon thto.

Rent not
paid by
vendors.
Indemnity.

VII. EACH pchaser of lots — & — shl enter into a covt in his convce for the indemnity of the vendors [& the este of their testor] as from the complon of his pchase agst the perpetual yrly rents to wch the ppty comprd in such respive lots is subjt as mentd in the parlars, & agst the covts & condons as to bldg on & user of such ppty resply & orwise contd in the deed by wch such rents resply were created [*or*, agst the rents, covts, & condons mentd in No. — of these condons], & shl, if required, exte & deliver to the vendors a duplicate of the convce, to be prepared by & at the expse of the vendors.

Indemnity
of vendors
against
liability
under
covenants.

VIII. THERE is a chief rent of £—— p.a. chged on the premes. The owner of this rent will join in the convce to the pchaser for the ppose of releasg the same; but no title shl be required to be shown thto other than the convce of the same to the psnt owner.

Rent to be
released.
Title.

IX. Lot — is subjt to an apportioned rent of £——, pt of a chief rent of £—— created by a deed, dated, &c.; but no legal apportionmt has been or shl be required to be made nor shl any objon or requon be made on this acct.

Former
apportion-
ment.

X. By the will of a former owner contributory rents of £—— & £—— were directed to be pd by the owners of other ppties as apportioned pts of a chief rent of £—— chged upon lot — & such other ppties. The pchaser of lot — shl be satisfied with the apportionmt or divon so made of the rent of £——, & shl not require any other apportionmt thof or any indemnity in respt of the portions payable out of such other ppties.

Former
apportion-
ment by
will.

XI. THE sevl lots are subjt to various provons as to the apportionmt of or indemnity agst rents affectg the same or some pt or pts thof togr with other ppty; but none of such mres shl be made the ground of any objon or requon, & the

Former
apportion-
ments and
indemnities.
General
provision.

respective purchaser shall take subject thereto in all respects, & it shall be assumed that all such provisions as far as necessary have been duly observed & performed up to the completion of the purchase of the respective lots.

Overriding
rents.
General
exclusion of
objections.

XII. No objection or requisition shall be made on the ground that any lot or any part thereof is either alone or with other property subject to any overriding chief or ground rent or rents, or any covenants or conditions other than those subject to which the same is sold or on the ground of the absence or insufficiency of any indemnity against any such overriding rent, covenants, or conditions, & the purchaser shall not call for any information respecting the origin or creation thereof or otherwise in relation thereto beyond what may appear in the abstract, but shall be satisfied with a declaration to be made, if required, at his expense that no claim has ever been made against the vendors in respect of any such rent, covenants, or conditions.

Bar of re-
quisitions.
Various.
Stringent.

XIII. No purchaser shall require the deed creating any rent mentioned in the particulars or these conditions to be abstracted or produced, or any information (except such as may be in the vendors' possession) as to the contents thereof or the persons by whom the rent is paid or the property charged therewith or the covenants or conditions contained in the deed creating the same or otherwise in relation thereto or any indemnity against such rent, covenants, or conditions.

As to lot
not sold.

XIV. If any lot is not sold the vendors shall stand in the place of the purchaser thereof for the purpose of these conditions.

Receipt for
last pay-
ment (a).

XV. The receipt for the last payment of the chief or ground rent charged on any lot which shall have accrued due previously to the completion of the purchase, by whomsoever signed, shall be conclusive evidence of the performance & observance of all covenants & conditions to which such lot is subject, or of the effectual waiver of any breach of any such covenant or condition up to the completion of the purchase, & no evidence shall be required of the title or authority of the person or persons by whom such receipt is given.

Option to
commute
part of
purchase-
money into
chief rent.

XVI. The purchaser of any lot shall, on giving notice in writing of his desire so to do within — weeks of the day of sale, have the option of commutg — p.c. of his purchase-money into a perpetual rent of £5 p.c. p.a. : such rent to commence from the — day of —, & to be payable half-yearly, in which case he shall within — months from that day accdg to position, plans,

(a) The provision as to this in the Conv. Act, 1881, s. 3 (4), only applies to leases, see p. 226.

elevons, & materials to be approved by the vendors or their surveyor, erect & complete on such lot houses or bldgs of sufft value to pduce an annl rental of not less than 8 times such rent, & he shl not be entled to a convce of such lot unless & until such houses or bldgs shl have been so erected & completed to the satisfon of the vendors' surveyor. The convce of every lot pchased subjt to a rent & a duplicate thof shl be prepared by the vendors' solors at the expse of the pchaser, & shl contain such covts & provons as are usually inserted in deeds creatg such rents, & parlarly covts & provons framed so as to bind the pchaser & his sequels in title, as far as may be, to maintain, repair, & rebuild whenever necy the houses or bldgs to be erected psuant to the last condon, & agst the carrying on of any noisome or offensive trade or business on the premes. The pchaser of any such lot may have the same conveyed to him by sevl convces at his expse, such a proportion of the rent being reserved in each as the vendors shl think fit.

XVI.

BUSINESS *as* GOING CONCERN (b).

1. *Usual condons except as follows*: The business & works will be continued & carried on by the vendors for their own benefit & at their own risk & cost up to the day fixed for complon of the pchase, & in the event of the actual complon being delayed beyond that day will be continued by them from that day up to the actual complon thof for the benefit & at the sole risk & cost in all respts (includg the manager's salary) of the pchaser, who shl also take to & pay for all the fixed & movable machy, engines, tackle, waggons, carts, horses, & other live & dead stock, & plant, chattels, & effects wch shl be in or upon the premes or in use in cannon thwith on the day fixed for complon, togr with the book debts owing to the sd business at that date at their fair value, to be ascertained by the valun, &c., *see* p. 249. The pchaser shl pay intt on his

Manufac-
turing
business.

(b) Compare the form on a sale by private contract, *infra*, p. 344.

pchase-moy & the amt of the afsd valuon or the balce for the time being remaing unpd at the rate of £5 p.c. p.a. as from the day fixed for complon until the same shl be pd. Upon paymt of the pchase-moy, togr with the amt of the sd valuon & the intt due under this condon, the pchaser shl be entled to posson or to the rect of the profits of the sd business & works, & pay, bear, & dischg and indemnify the vendors agst all rates, taxes, & other outgoings & losses (includg all liabilities & outgoings arisg out of any uncompleted contracts or engagemts) as from the day fixed for complon, & the profits & outgoings shl (if necey) be apportioned. Until the actual complon of the pchase the business shl, except as to the appropriation of profits & liability for outgoings & losses, be carried on under the same style & firm & in the same mner & the vendors shl retain the same posson & ppty in the premes & have the same rt of controllg the conduct & managemt thof as they wd have had if the same had not been sold.

Newspaper.

II. (1) *Usual condons as to biddgs, deposit, complon, & intt.* (2) The vendors will deliver to the pchaser a plain copy of the declon of proprietorship filed at the Stamp Office under wch the newspaper is now published, but no abstract or further evidce of title shl be required, & the afsd declon shl be conclusive evidce of the vendors' title. (3) The newspaper will be continued to be published as htofore by or on behalf of the psnt proprietors at their risk & for their benefit until & inclusive of the publicon of the number or edition for the — day of —, from wch time the pchaser shl be entled to print & publish or continue the same. (4) On paymt of the balce of pchase-moy at the time & place above appted the vendors will if required exte to the pchaser a pper assignmt to be prepared by & at the expse of the pchaser. (5) Immedly after complon of the pchase the pchaser shl make or cause to be made & shl duly file a fresh declon as required by law as to the intd place of printg & publicon of the sd newspaper & as to the printer & publisher & proprietor or proprietors thof, & shl duly comply with all the requiremts of the law with respt to the printg & publicon of the sd newspaper in continuon of the publicon thof by the vendors, & the pchaser shl not be entled to publish the sd newspaper until such fresh declon has been duly made & filed & the other requiremts afsd have been duly

complied with. (6) If the purchaser shall fail to comply with these conditions his deposit shall thereupon be absolutely forfeited to the vendors, who shall have the option either to discontinue the said newspaper or to continue the same either immediately or at any time afterwards & either temporarily or permanently, & in case they shall so continue the same they shall be at liberty to resell the same at such time & place subject to such conditions & in such manner as they shall think fit, & any deficiency in price on the resale & all expenses attending the same together with all losses (if any) incurred in carrying on the newspaper in the meantime shall be immediately made good by the defaulter at the present sale or shall be recoverable as & for liquidated damages, but on the other hand the vendors shall be entitled to retain for their own benefit all profits resulting from carrying on the said newspaper until the resale.

CONTRACTS FOR SALE (a).

I.

AGREEMENT *for SALE of Freeholds or Copyholds (b) with usual PROVISIONS. VARIATIONS where the VENDOR contracts by an AGENT, and for a SALE under the SETTLED LAND ACTS, &c.*

Parties.

ARTICLES OF AGRMT, made the — day of — betn A., of, &c. [as agent for & on behalf of C., of, &c.] hinafter

Frame of contracts for sale.

(a) See the forms of general and special conditions under the head CONDITIONS OF SALE, which are applicable for the most part with little (if any) alteration to sales by private contract. And see the forms given below of miscellaneous clauses applicable to sales by private contract. Special clauses relating to various descriptions of property such as advowsons, reversions, life policies, chief rents, &c., will be found under CONDITIONS OF SALE. The conditions usual on sales by auction are very commonly, notwithstanding the stringency of some of them, submitted to by purchasers on sales by private contract. See also the note ante, p. 224, as to the provisions of the Vendor and Purchaser Act, 1874, and of the Conv. Acts, 1881 and 1882, and the other notes to CONDITIONS OF SALE.

Variations for sale under Settled Land Acts.

For variations for a sale by a tenant for life or other limited owner under the Settled Land Acts, or by trustees or mortgagees, see CONDITIONS OF SALE, pp. 238, 239.

As to mansion-house, &c.

If the sale is of the mansion-house or land occupied with it, and the consent of the trustees or Court has not been obtained under s. 10 of the Settled Land Act, 1890, 53 & 54 Vict. c. 69 (which has repealed s. 15 of the Settled Land Act, 1882), clause 1 may be modified, and a clause avoiding the contract if such consent is not obtained added as follows:—

“The vendor, who is sellg as tenant for life [limd owner], under the powers of the Settled Land Acts, 1882 to 1890, agrees to sell, subjt to the consent of his trees or the approval

(b) As to the enfranchisement of copyholds, see the Copyhold Act, 1894, repealing the Copyhold Act, 1887.

called the vendor) of the one pt, & B., of, &c. (hinafter called the pchaser) of the other pt.

of the Ct being obtained as hinafter mentd, & the pchaser agrees to pchase, &c.”

“The vendor shl on or bfe the — day of —, at his own cost or that of the settled este, apply for & endeavour to obtain the consent of the vendor’s trees to or an order of the Ct approvg the sale, & in case such consent or order shl not be obtd on or bfe the — day of —, or such later day as the vendor & the pchaser shl agree to [or in case the sale cannot for any reason arisg from the state of the title be carried into effect under the statutory or other powers of the vendor or his trees] then the sale shl be void, & the deposit shl be repd to the pchaser, but witht any intt, costs, or compenson.”

Clause avoiding contract unless consent of trustees or Court obtained.

As to who are trustees for the purposes of the Settled Land Acts, see the Act of 1882, s. 2 (8), and s. 38, and the Act of 1890, s. 16. As to the necessity for giving notice of the sale to the trustees, unless waived by them, see the Act of 1882, s. 45, as modified by the Act of 1884, s. 5. The waiver should precede the contract, and not be made in the contract itself, such a course being of doubtful validity, and being a matter which does not concern a purchaser dealing in good faith. For a form of waiver by the trustees see Vol. II. NOTICES. See generally as to sales under the Settled Land Acts, CONVEYANCES ON SALE, *post*.

Under the Settled Land Act, 1882, s. 22 (2), the investment of capital money is under the control of the tenant for life, who is therefore the proper person to enter into a contract of purchase. This precedent is adapted without alteration to the case where the purchase is made by a tenant for life or other limited owner under the Act; or (except the substitution of the plural) to a purchase by trustees.

As to purchase by tenant for life or trustees.

For a form of agreement for sale by private contract referring to printed particulars and conditions of sale, see p. 232.

The stamp on a contract for sale is 6*d.* if under hand only or 10*s.* if by deed, under the headings “agreement” and “deed” in the schedule to the Stamp Act, 1891 (54 & 55 Vict. c. 39), but subject to the provisions of s. 59 of that Act (re-enacting s. 15 of the Revenue Act, 1889, which last-mentioned enactment repealed and was substituted for s. 18 of the Customs, &c. Act of the same session). The object of s. 59 of the Act of 1891 is to impose the *ad valorem* sale duty on the contract in cases in which (as in *Commissioners of Inland Revenue v. Angus*, 23 Q. B. D. 579) the contract may not require an actual conveyance to perfect it. It accordingly (sub-s. 1) makes the contract liable to the duty where the subject-matter consists (a) of a merely *equitable* estate or interest whether in land or any other property, or (b) of any estate or interest in any property, with the exception of land, or of property situate out of the United Kingdom, or of goods, &c., and certain other exceptions. But the contract if stamped only with the fixed duty of 6*d.* or 10*s.*, as the case may be, is to be deemed duly stamped for the purpose of enforcing

As to stamp on contracts for sale.

Agreement
for sale.

1. THE vendor agrees to sell, & the purchaser agrees to purchase, for the sum of £—— the inheritance in fee-simple [the inheritance according to the custom of the manor of —— in the county of ——] in possession free from [land tax & tithe rentcharge, & from all] incumbrances [except as hereinafter mentioned], of ALL, &c., *peculiarities set forth fully, with a reference, if need be, to a schedule & plan, see CONVEYANCES ON SALE, PECULIARITIES*, with the appurtenances thereof (a).

[*Provide as to timber, fixtures, &c., if any, to be taken at a valuation, p. 248.*]

Payment of
purchase-
money and
completion.

2. THE purchaser having paid to the vendor the sum of £—— part of the said purchase-money as a deposit (b) on the execution of this agreement shall pay the residue of the said purchase-money [together with the

specific performance or recovering damages for its breach (sub-s. 4); and, in the like case, it is to be regarded as duly stamped if a conveyance is presented for stamping with the *ad valorem* duty within six months, or such longer period as the commissioners may think reasonable (sub-s. 5). If the *ad valorem* duty is paid on the contract, provision is made for denoting it on or transferring it to the conveyance (sub-s. 3). In case there is a sub-sale before the conveyance the sub-contract is to be charged with the *ad valorem* duty on the excess consideration (if any), or otherwise with the fixed duty (sub-s. 2). In the event of the contract being rescinded or not carried into effect, the *ad valorem* duty is to be returned (sub-s. 6). It will be observed that s. 59 does not apply to a legal estate in land; and it is believed that it is the practice in general (at any rate on sales by auction) to put only a 6d. stamp on the contract even in cases coming within that enactment.

(a) As to what passes as appurtenances to the land, see *infra*, p. 392, note. Where the property is insurable, add, “& with the benefit of any existing or future insurances against fire, &c. ;” as at p. 269, form XVII.

As to pay-
ment of
deposit, to
vendor's
solicitor.

(b) Sometimes to guard against the risk of the vendor, if he receives the deposit, failing to account for it (in such a case as that of a tenant for life selling under the Settled Land Act, or a mortgagor selling a heavily incumbered estate), the deposit is paid to the vendor's solicitor as a stakeholder, or into a bank to the joint account of the solicitors of both parties as stakeholders. In the former case, add here “To Mr. ——, the vendor's solicitor as stakeholder ;” and append a receipt to that effect by the vendor's solicitor at the foot of the contract. In the latter case say, “into the —— Bank, in the joint names of &c., as stakeholders, but at the risk of the purchaser ;” and in the clause as to completion add “but any interest which may be payable by the said bank on the deposit shall on completion be paid to the purchaser ;” and at the beginning of the clause as to conveyance, insert “upon the said deposit being released by the purchaser &c.”

amt of the afsd valuon] to the vendor, or as he shl direct, on the — day of — next at the office of the vendor's solors, Messrs. — at —, at wch time & place the pchase shl be completed.

3. *Posson & intt*, p. 233.

4. *Outgoings, easemts, &c.* p. 235, saying as to the leases & agreemts with the tenants, "the counterpts or copies of wch have been pduced to the pchaser's solor, & of the contents & parlars of wch he shl be deemed to have notice."

5. THE vendor shl, if required, within *one week*, from date Abstract. hrof, deliver or send by post to the pchaser or his solor an abstract of his title to the premes commeneg, &c., here add any special condons as to commencement & evidce of title, see above, CONDONS OF SALE, p. 251, et seq., includg, if required, provons makg recitals evidce, identity, &c., as at p. 236, & as to conuce, munimts, &c., time for deliverg requons, &c., compenson for misdescription, & non-compliance with condons, see pp. 237—242: reservons & restrictive condons in favour of vendor, see pp. 283, 285, & substitutg for the refces to the parlars & condons of sale a refce to, "this agrmt," & for the refces to the day of sale a refce to the "date of this agrmt." IN WITS whof the sd pties [the sd A. as agent for & on behalf of the sd C., & the sd B.] have hrunto set their respive hands the day & yr above-written, or, "As wits the hands of the sd pties."

Signed by the above-named — }
in the presce of — .

II.

AGREEMENT for sale of LEASEHOLDS, with usual provisions (c).

MEM OF AGRMT, made the — day of — betn A., Parties. of, &c. (hinafter called the vendor) of the one pt, & B., of, &c. (hinafter called the pchaser) of the other pt.

(c) As to the recent enactments affecting contracts for sale, see above p. 224 et seq.; as to those relating to leaseholds, see p. 225. See also above, CONDITIONS OF SALE; and for forms of special conditions as to leaseholds, see p. 258. As to sales and purchases by tenants for life, and trustees, &c., see p. 217, note (a).

Agreement
for sale.

1. THE vendors sh^l sell & the pchaser sh^l pchase for the sum of £—— ALL that leasehd, &c., *pcels, by a description shortened from the lease*, with their appurts, as the same are held for the residue of a term of —— yrs, commencg from the —— day of ——, grted by an indre of lease [underlease] dated, &c., at the yrly rent of £——, free from all incumbces [except as hinafter mentd] (a).

[2. *Provons as to valuon of fixtures, &c., p. 249.*]

3. *Paymt of pchase-moy & complon, p. 318.*

4. *Posson & intt, p. 233.*

5. *Outgoings, easemts, &c., p. 235, mutatis mutandis.*

Production
of lease,
&c.

[6. THE [under] lease under wch the ppty is held or a copy thof, & counterpts or copies of the leases to & agrmts with the tenants havg been already pduced to the pchaser's solor, he shall be deemed to pchase with full notice of the contents thof].

Abstract.

7. THE vendor sh^l, if required, within, *one week*, from the date hrof deliver or send by post to the pchaser or his solor an abstract of his title to the sd premes, commencg with, &c., *as in p. 251. Add any special condons as to title, &c., includg condon as to licence to assn, if required, & provons makg recitals evidce, identity, &c., so far as required, see CONDONS OF SALE, p. 236, & SPECIAL CONDONS, pp. 258, 282 et seq. : last rect for rent evidce of pformce of covts, p. 243 : conrce, p. 237 : munimts, &c., pp. 299 et seq. : apportionmt of rents, pp. 280, 281 : time for deliverg requons, &c., p. 239 : compenson for misdescription & non-complice with condons, pp. 241, 242 : substitutg for the refces to the parlars & condons of sale a refce to "this agrmt," & for the refces to the day of sale a refce to the, "date of this agrmt."* IN WITS, &c.

(a) Add, if appropriate, "with the benefit of any existg or future insces agst fire, &c. " as above, p. 269.

III.

AGREEMENT *for SALE of land of any tenure. A SHORT FORM (b).*

AGRMT made this — day of — betn A., of, &c. (hin- Parties.
after called the vendor), of the one pt, & B., of, &c. (hinafter
called the pchaser), of the other pt.

1. THE vendor agrees to sell & the pchaser agrees to pchase Agreement
for the sum of £——, *insert short description of the ppty, & in for sale.*
the case of leasehds referrg to the lease, see Precedents I. & II.

[2. *Valuon, short form, p. 249.*]

3. *Paymt of pchase-moy & complon, p. 318.*

4. *Posson & intt, p. 233.*

5. *Outgoings, &c., p. 235.*

6. THE vendor shl, if required, within one week from the Abstract.
date hrof send by post to —, the pchaser's solor, at —, an
abstract of his title to the premes commencg, &c., *here add any*
special condons as to commencement & evidce of title, &c., see
SPECIAL CONDONS OF SALE.

7. *Identity, p. 237, Form 8 (B).*

8. *Custody of munimts, &c., see SPECIAL CONDONS.*

9. *Time for deliverg requons, p. 239.*

10. *As to misdescription, p. 241, Form 17 (A) or, p. 242,*
17 (B).

11. *Non-complice with condons, p. 242. In the forms taken*
from CONDONS OF SALE, a referce to "this agrmt" will be sub-
stituted for the referces to the parlars & condons, & a referce to
the "date of this agrmt," for the day of sale. IN WITS, &c.

(b) See p. 316, note.

IV.

AGREEMENT for SALE of FREEHOLDS for a sum in gross and a PERPETUAL RENT CHARGE, the purchaser being INDEMNIFIED against a pre-existing smaller RENT CHARGE (a).

- Parties.** PARTIES, A. (hinafter called the vendor), 1. B. (hinafter called the purchaser), 2.
- Agreement for sale.** 1. THE vendor agrees to sell & the purchaser agrees to purchase the inheritance in fee simple in possession free from incumbrances, except as hereinafter mentioned, of all, &c., parcels, with the appurtenances thereof.
- Consideration.** 2. THE consideration for the said purchase shall be the sum of £—, to be paid by the purchaser on the execution of this agreement, & a perpetual yearly chief rent of £—, to be paid to the vendor as hereinafter mentioned.
- [3. Provisions as to fixtures, &c., to be taken at a valuation, p. 249.]
4. Provision as to payment of the amount of the valuation, if any, & completion, p. 318, & as to possession, & interest on the amount of the valuation, if any, p. 233.
- Overriding chief rent.** 5. Provision as to easements, &c., p. 285, adding “& to an overriding chief-rent of £20 charged on the said premises, together with other property, by an indenture, dated, &c. & to the covenants contained in such indenture, so far as they affect the premises, but with such indemnity against the last-mentioned rent-charge as is hereinafter mentioned.
6. Conditions as to abstract & title, &c., see Precedent I.
7. Last recit for overriding rent evidence of performance of covenants, p. 248, *mutatis mutandis*.
- [8. Clause as to expenses, p. 237.]
9. Clause as to covenants, p. 237, saying, “a proper assurance of the premises to the uses hereinafter mentioned.”
- Provisions for securing the rent-charge.** 10. THE assurance of the premises shall be to the use that the vendor, his heirs & assigns, shall receive out of the premises a perpetual yearly rent-charge of £— to commence from the —

(a) See the form of conditions of sale of building land on chief rent, p. 304.

day of —, & to be payable half-yrly on the — day of — & the — day of —, witht any dedon, the first such paymt to be made on the — day of — next, such rent-chge to be issuing out of & chged upon the premes, & to be secd by the usual powers (express or implied by statute (b)), of distress & entry & rect. of rents, & subjt thto to the use of the pchaser in fee simple. The assurse shl contn the follg covts by the pchaser (framed so as to bind his assns) with the vendor, (that is to say): 1st, to pay the sd rent-chge of £— at the times & in mner afsd: 2ndly (c), to maintain & keep in repair the houses & bldgs on the sd land, & to rebuild the same from time to time when necy, & so that there shl always be upon the sd land houses or bldgs of the clear yrly value of not less than £—, & genlly to pform & observe all the covts & condons by the grantee contd in the sd indre of, &c., other than the covt for the paymt of the sd rent-chge of £20, so far as the same covts & condons apply to the ppty sold. The sd assurse shl also contain a power to the vendor, his hrs & assns, of absolute re-entry (d), [durg the lifetime of the sevl pties thto or any of them, & 21 yrs after the death of the last survor of them (e), & such further time as may not be contrary to any rule of law agst perpetuities or for preventg forfeiture] in case the sd rent-chge of £40 or any pt thof, shl be in arrear for — calr months, or on the breach or non-observe by the pchaser, his hrs or assns, of the covts & provons to be thrin contd, & on the pt of the pchaser, his hrs & assns, to be pformed & observed or any of them. The assurse shl also contain covts by the vendor (f) for paymt of the sd rent-chge of £20, &

(b) See the Conv. Act, 1881, s. 44.

(c) A covenant to erect buildings will be added if required, see p. 288 *et seq.* As to the remedies under a covenant of this nature, see ante, p. 305, note.

(d) As to the power of re-entry and the words in brackets, see p. 306, note.

(e) Or “during the lifetime of Her Majesty the Queen and her descendants now living, or of the survors or survor of them, or within 21 yrs after the dece of the last survor of them.”

(f) If the vendors are trustees the liability to enter into these covenants should be negatived, and the purchaser be bound to be content with such other indemnity as the case may admit of.

to perform & observe all the covenants by the grantee & condons contained in the said indenture of, &c., so far as the same ought to be performed & observed in respect of the lands & premises comprised in such indenture, other than the premises hereby agreed to be sold, & also a power to the purchaser, his heirs & assigns, to retain out of the said rent-charge of £— any moneys which he or they may be called upon to pay & shall actually pay in respect of the said rent-charge of £20, including any expenses incurred in consequence of the non-payment thereof. *Other clauses as in ordinary contracts for sale, see Precedent I.* IN WITNES, &c.

V.

PROVISIONAL CONTRACT *for SALE of FREEHOLDS,* *subject to the APPROVAL of the COURT being obtained* *under the SETTLED ESTATES ACT, 1877 (a).*

Parties. *PARTIES*, A., beneficial owner in possession of the estate hereinafter mentioned, under the will of her late husband X., deceased, & B. & C., trustees of the said will (hereinafter called the vendors), 1. D. (hereinafter called the purchaser), 2.

Agreement for sale. 1. SUBJECT to the approval of the High Court of Justice being obtained as hereinafter mentioned, the vendors agree to sell, & the purchaser agrees to purchase, for the sum of £—, the inheritance in fee simple in possession free from incumbrances of, *peculiarities*, with the appurtenances thereof.

As to sales under the Settled Estates Act, 1877.

(a) 40 & 41 Vict. c. 18. The Court had no power under the Act to direct the sale to be made out of Court (*Re Harvey*, 21 Ch. D. 123), but by R. S. C., 1883, Order 51, Rule 1A., as modified by the Rules of December, 1888, Rule 9, this may now be done. Recourse to the Settled Estates Act, 1877, is now rare, having regard to the very extensive powers of sale, &c., out of Court, now given to limited owners by the Settled Land Act, 1882; but there are exceptional cases of estates in settlement to which that Act does not apply, and for which the former Act may be made use of, as for example, where there is no person having the power of a tenant for life and an infant is contingently entitled, *Re Sparrow*, [1892] 1 Ch. 412, or where a tenant for life has assigned his life estate for value, and cannot obtain the concurrence of the assignee in the sale. As to who may apply under the Act, see *Taylor v. Taylor*, 20 Eq. 297, 1 Ch. D. 426, 3 Ch. D. 145; *Vine v. Raleigh*, 24 Ch. D. 238, and *infra*, p. 459.

2. THE title of the vendors to the sd premes havg been already inquired into, & approved of by the pchaser (subjt to the 9th clause hrof), shl be accepted by him witht further investigon.

Purchaser to accept title (b).

3. THE pchaser shl on or bfe the — day of — next pay the pchase-moy to the sd trees, or into the Bank of England, as may be directed by the order of the sd Ct in that behalf made upon the applicon hinafter mentd; & if the same is not so pd, the pchaser shl pay intt (less income-tax) thron, at the rate of £5 p.c. p.a. from the sd — day of — next to the day on wch the same is actually pd.

Payment of purchase-money and interest.

4. *Posson & convce, &c., see pp. 233, 237.*

5. *Provon for retention of munimts relatg to other ppty. See CONDONS OF SALE, pp. 299 et seq.*

6. *Outgoings, easemts, &c., see p. 235 or p. 328.*

7. THE pchaser havg investigated the title, & havg satisfied himself as to the identity of the ppty agrd to be sold with the ppty descd in the munimts, & havg also satisfied himself of the correctness of the description contd in this agrmt, shl not require any further evidece of such identity, or make any objon or claim to compenson in respt of any want of identity, or any error or omission in the description hrin contd wch may hrafter be discovered.

Provision as to identity, misdescription, &c. (b).

[8. THE costs of the vendors & all other pties, as betn solor & client, of or incidental to the sd sale, & the convce, & this psnt contract, & the applicon to the Ct hinafter mentd, includg the expses of the negotiations preliminary hto, & of takg counsel's opinion as to the power of the vendors to sell, & of the preparon of the abstract, & makg out the title, & of all surveys & valuons, & all other chges & expses incurred in carryg out the sale, or in relon thto, & includg also the expses of the interim investmt of the pchase-moy in the funds or orwise pendg the re-investmt thof in the pchase of land or orwise, as directed by the Settled Estates Act, 1877, shl be borne by the pchaser, & such costs & expses (other than those of the pchaser) shl be pd by him to the vendors or their solor upon the pchase being completed, & such investmt of the pchase-moy as afsd being made, or in the

Provision for payment of all expenses by purchaser (b).

(b) This clause is of course special.

event of the sanction of the sd Ct not being obtained on or bfe the — day of — next, as hinafter mentd, then on such last-mentd day.]

Vendors to make application for sanction of Court (a).

9. An applicon shl forthwith be made by the vendor to the sd Ct for the sanction of the Ct to the sd sale under the Act afd; and in case such sanction shl not be obtained to this contract, eir in its psnt terms, or with such varions as may be assented to by both pties, on or bfe the — day of — next, then this contract shl be void [save & except the last precedg clause].

Power to vendors to annul on default of purchaser.

10. If the pchaser shl refuse or neglect to comply with any of the stipulons of this contract, the vendors shl be at liberty to annul the same, & shl thrupon be entled to recover from the pchaser all expses hinfte made payable by him, or occasioned by his default. IN WITS, &c.

VI

AGREEMENT for SALE of FREEHOLDS to a RAILWAY COMPANY. VARIATIONS for LEASEHOLDS or COPYHOLDS, and where the SALE is made under the SETTLED LAND Act, 1882 (b).

Parties.

PARTIES, A. (hinafter called the vendor), 1. [B. & C., vendor's trees, 2.] D., as agent for & on behalf of the — Rly Co (hinafter called the Co), 3.

Purchase by trustees.

(a) The following is a similar clause, where the purchase is made by trustees under the sanction of the Court:—

"The pchasers shl forthwith apply for & endeavour to obtain the sanction of the Chancery Divon of the High Ct of Justice to this contract in an action of — v. —, being an action for the admon of the este of the late —, & if such sanction shl not be obtained to this contract in its psnt form or with such modifcons as may be assented to by both pties bfe the — day of — next, this contract shl become void & all costs of & incidental to such applicon & any order made thron shl be pd by the pchasers or out of their trust este."

As to sales

(b) See also the clauses contained in Precedent XXIII., p. 60. See the

1. By virtue of the powers, & subj^t to the provons of the — Rly Act, 18—, [& the — Rly Act, 18—, or one of them], & of the Public Acts incorpd thwith, the vendor agrees to sell & the Co agree to pchase for the pposes of the rly & works authorised by the sd first-mentd Act, for the sum of £—, the inhance in fee-simple in posson, *or*, “the inhance accdg to the custom of the manor of — in the coy of — in posson,” *or*, “the leasehd este & intt of the vendor as hinafter stated,” of & in ALL THAT piece or pcel of land situate in the parish of —, in the coy of —, contg — acres, &c. [with the messe & outbldgs erected & built thron, or on some pt thof], known as, &c., & nod — in the plans & books of referce thto of the rly authorised by the sd first-mentd Act relatg to the sd parish deposited with the Clerk of the Peace for the sd coy of — [if so intd say for freehds, “togr with all the mines & minls (if any) in or under the same,” *or*, “togr with all minls, beds of, &c., &c., substees & soil on or within — ft of the surface of the sd lands, but exclusive of all mines or minls lying at a lower depth than — ft under the surface thof,” *or*, for copyhds or leasehds, “togr with all the intt (if any) of the vendor in the mines, &c.” (c)] [if leasehd add, all wch premes are held by the vendor, togr with other ppty, for the residue now unexpired of a term of — yrs from the — day of —,

Agreement
for sale.

Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), and the Amending Acts (23 & 24 Vict. c. 106, 32 & 33 Vict. c. 18, and 46 & 47 Vict. c. 15). Where the vendor is a tenant for life or limited owner, or an infant seised in fee, the sale, if the title is otherwise good, may now be generally made, to the advantage of both the vendor and the company, under the Settled Land Acts, 1882 to 1890, so as to avoid the necessity for a valuation, and payment of the purchase-money into Court under the L. C. C. Act, 1845, ss. 9 and 69; see the clause providing against the purchase-money being paid into Court. If the sale purports to be made under the S. L. Acts the clause as to costs (p. 331) should be inserted; otherwise the vendor may lose the benefit of the L. C. C. Act as to costs. As to the S. L. Acts, see the references above, p. 316, note.

by limited
owners and
infants.

(c) See the Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), ss. 77—82; *Midland Rail. Co. v. Haunchwood, &c., Co.*, 20 Ch. D. 552; *Midland Rail. Co. v. Miles*, 30 Ch. D. 634, 33 Ch. D. 632; *Midland Rail. Co. v. Robinson*, 37 Ch. D. 386, 15 App. Cas. 19; *Consett Waterworks Co. v. Ritson*, 22 Q. B. D. 318, 702; *Glasgow Corp. v. Farie*, 13 App. Cas. 657; *Ruabon, &c. v. Great Western Rail. Co.*, [1893] 1 Ch. 427; and as to expressly excluding minerals if so intended, see the Conv. Act, 1881, s. 6.

grted by an indre of lease dated, &c., at the yrly rent of £—— (whof £—— shl be the apportioned rent payable in respt of the premes hby agrd to be sold) & subjt to the covts in the sd indre of lease contd].

Outgoings,
easements,
&c.

2. THE premes are sold subjt to all quit & other rents, incidents of tenure, & easemts affectg the same, & to an indre of lease, *or*, "underlease," dated, &c., of the premes hby agrd to be sold, togr with other ppty, for a term of — yrs from the — day of —, at the yrly rent of £——, of wch £—— shl be the apportioned rent payable in respt of the premes hby agrd to be sold, but free from all other incumbces.

Purchase-
money to
include
compensa-
tion for
damage by
severance,
&c. (a).

3. THE sd pchase-moy shl be considered to include satisfon & compenson for all damage (whether permanent, temporary, or recurrg), loss, or inconvenience occasd by severce or orwise, injuriously affectg the vendor's other ppty, in the exercise of the powers of the sd Acts, or by removal, or loss of trade or goodwill [except structural damage & injury to any adjoining lands or bldgs caused by the constron of the sd rly, or orwise done or permitted by the Co], & shl be in full satisfon for all communicons, gates, bridges, fences, culverts, drains, waterg-places, ways, passages, works, & things over, under, across, or near to the sd rly [except such as are hby specially provd for] wch might orwise be required to be miade or done under any of the sd Acts for the better enjoymt, proton, or accommodon of the vendor's other ppty.

Levels.

[4. THE vendor hby consents to such alterons of levels & works as may be found convenient in the constron & maintce of the sd rly & works.]

Tenants'
interest.

[5. THE sd pchase-moy shl also include all claims (except for crops as hinafter provd for) on the pt of the tenants or occupiers of the premes (whether under contract, custom, or statute (b) or orwise), & if the Co shl require posson bfe the crops are matured, they shl pay the value of such crops to the tenants or occupiers of the land, posson whof is required, or orwise allow time for the same to mature & be removed.

(a) See the Lands Clauses Consolidation Act, 1845, s. 63, and the Railways Clauses Consolidation Act, 1845, ss. 6, 16.

(b) See the Agricultural Holdings (England) Act, 1883 (46 & 47 Vict. c. 61); The Market Gardeners' Compensation Act, 1895 (58 & 59 Vict. c. 27).

The Co sh^l give due notice to the tenants & occupiers of the sd lands & premes to treat as provd by statute, & sh^l deliver all claims made by any such tenants & occupiers in respt of their intt in the sd land & premes to the vendor, who sh^l settle the same upon such terms in all respts as he may think fit, he, the vendor, hby agreeing to indemnify the Co from paymt thof.]

[6. *If the vendor is a limd owner havg no power to sell except under the Lands Clauses Act, insert the follg:—*If the amt of pchase-moy & compenson determined psuant to the provons of the Lands Clauses Consolidon Act, 1845, sh^l exceed the sd sum of £——, then this agrmt sh^l be construed as if the amt so determined had been substituted hrin for the sd sum of £——.]

Provision as to purchase-money where vendor is limited owner (c).

[7. THE vendor, psuant to & in exercise of the power in that behalf given to him by the Settled Land Act, 1882, hby elects that the sd pchase-moy of £—— sh^l be pd by the Co to the pties hto of the second pt as trees of his settlemt, & not into Ct.]

Purchase-money to be paid to trustees (d).

[8. THE Co sh^l, within —— yrs from the date of this agrmt, exte, & for ever thrafter maintain, at their own expse, the accommodon works specified in the schdle hto for the benefit of the vendor, his hrs & assns, or other the psons who may, for the time being, be entled to the —— farm. The convce to the Co sh^l contain a covt to the effect of this psnt clause, & a duplicate thof exted by the Co sh^l be delivered to the pchaser on complon.]

Accommodation works.

9. THE vendor sh^l, within —— days from the date hrof, deliver to the solors of the Co an abstract of title to the premes hby agrd to be sold, but to such extent only as the sd solors sh^l require, & produce the deeds & munimts of title & other evidces in proof of the same, & the vendor & all other necy pties sh^l make & exte all pper & necy assurces to the Co, or as they sh^l require, of the premes with the usual statutory covts for title & for prodon [& safe custody] of deeds & munimts not handed over to them.

Abstract.

(c) See the Lands Clauses Act, s. 9, as to the necessity for strict compliance with which see *Bridgend, &c. Co. v. Dunraven*, 31 Ch. D. 219. In the case of a tenant for life selling under the Settled Land Act, 1882, the next clause will be substituted for this.

(d) See the Settled Land Act, 1882, s. 22.

Possession
(a).

10. THE Co shl be at liberty, subjt to the rts of the tenants, to take posson of the premes at any time bfe complon of the pchase on givg to the vendor or his solors ——— days' notice in writg under the hand of the secretary or solor of the Co, & (if required) depositg the sd pchase- & compenson-moy in the jt names of the Co or their nominee & the vendor in the ——— Bank, where the same shl remain at the risk of the Co until the pchase shl be completed, when the same shl be pd to the vendor or other pties entled thto or orwise into Ct for their benefit, as provd by the sd Acts, the Co being entled to any intt allowed by the sd bank, & such entry shl not be an acceptce

Alternative
clause.

of the title [*or*, The Co shl not pceed to take posson of any pt of the sd lands & premes witht eir the written consent of the vendor, or takg such pcdgs for obtaing posson as provd by the sd Acts, & in case posson of the premes shl be taken by the Co bfe the vendor shl have deduced a good title to the whole of the premes, the pchase-moy, or a proportionate pt thof in respt of the premes to wch a good title shl not have been deduced, shl, pendg the investigon of the title, be deposited at the risk of the Co in a bank to be approved by the vendor, in the jt names of the vendor & a nominee of the Co, & shl be pd to the vendor or other pties entled thto with intt thron at the rate of ——— p.c. p.a. from the time of the deposit, upon a good title being deduced as afsd, or in default of such title being deduced shl be pd into Ct psuant to the provons of the sd Acts, with intt as afsd].

Comple-
tion.

11. THE pchase shl be completed on or bfe the ——— day of ——— next, at the office of Messrs. ———, at ———.

Interest
on unpaid
purchase-
money.

12. THE Co shl pay to the vendor or other pties entled thto intt at the rate of £— p.c. p.a. on the sd pchase & compenson-moy, or on so much thof as shl remain unpd [*where the varion in clause 10 is used, say, or undeposited*] from the time of their takg posson or from the sd ——— day of ——— next, whichever shl first happen, until the complon of the pchase & paymt of the sd pchase- & compenson-moy, or the balce thof; [*or*, The Co havg, with the consent of the

Variation.

(a) This clause enables the company to commence their works; *Bolton v. London School Board*, 7 Ch. D. 766. As to the right of the company to take possession, see the Lands Clauses Consolidation Act, 1845, ss. 84, 85; *Bygrave v. Metropolitan Board of Works*, 32 Ch. D. 147.

vendor & witht prejudice to the rts & liabilities of the respive pties with respt to title as betn vendor & pchaser, taken posson of the portions of the sd lands nod resply — on the sd plan, on the — day of —, & of the remr of the sd lands on the — day of —, shl pay intt at the rate of, &c., on the respive sums of £— & £—, being the appor-tioned pchase-moy for such respive portions of the sd lands from the respive dates when posson thof resply was taken as afsd until the actual complon of the pchase].

[13. THE land-tax & tithe rent-chge shl be apportioned, if necy, under the provons of the sd Acts at the expse of the Co.]

Apportion-
ment of
land-tax,
&c.

Add any provons as to title, identity, compenson for mis-description, custody of deeds, &c., wch may be applicable, as in ordinary contracts for sale (b).

14. THE vendor shl rele to the Co any rt of pre-emption to wch he may be entled under the Lands Clauses Consolidon Act, 1845, in respt of the premes [or, As to any pt of the premes wch shl not be required for the pposes of the sd Co, the vendor, his hrs or assns, shl have the like rt of pre-emption as he or they wd have been entled to under the Lands Clauses Consolidon Act, 1845, if such lands had not been built upon or used for bldg pposes, & no pt of such superfluous lands shl in the meantime be let by the Co on lease or from yr to yr or orwise to any pson other than the vendor, his hrs or assns].

Release,
or, reser-
vation, of
right of
pre-emp-
tion (c).

15. THE Co shl, on complon of the pchase, pay the vendor's costs of & incidental to this agrmt & of deducg & verifyg his title, & of the assurse to the Co & all other costs & expses of the vendor as provd by the Lands Clauses Consolidon Act, 1845, "includg all costs, chges & expses wch might have been ordered by the Chancery Divon to be pd by the Co if the

Costs.

(b) In agreements for sales to companies purchasing under the Lands Clauses Acts, it is rarely necessary to make any stringent conditions as to the evidence to be given in support of the title, for as all the expenses are thrown on the company, it rarely happens that they make unreasonable requisitions. The main point to be attended to on the part of the vendor is to guard by contract against the money being paid into Court in such a manner as to excite any dormant claims.

Conditions
as to title
on sales
under
Lands
Clauses
Acts.

(c) The first of these alternative clauses applies to rural, the second to urban lands; see the Act, s. 128.

urchase-moy had been deposited in the bank " (a) [together with the sum of £—— for the costs & charges of his surveyor & solicitor for attending the making out & prosecution of his claims against the Co, inclusive of the costs of this agreement].

Provision
for failure
of agree-
ment.

16. In case this agreement shall in any respect fail to take effect, whether owing to the default of either party or otherwise, or in case any matter relating to the purchase or taking by the Co of the premises is not herein provided for, the respective parties hereto may, so far as respects the said lands & premises hereinbefore described, at any time exercise or have recourse to such of the powers & provisions of the said Acts relating to the purchase or taking of land by the Co, whether by agreement or by compulsory means, as may be applicable to the case. IN WITNES, &c.

VII.

AGREEMENT for SALE of GOODWILL and TRADE-MARK (b). The PURCHASE-MONEY being payable by INSTALLMENTS.

Parties.

PARTIES, A. & B. (hereinafter called the vendors), 1. C. (hereinafter called the purchaser), 2.

As to trade
marks, &c.

(a) See *Bentinck v. London & South Western Rail. Co.*, 40 Sol. J. 130.

(b) See the Patents, Designs, and Trade Marks Acts, 1883 to 1888 (46 & 47 Vict. c. 57; 48 & 49 Vict. c. 63; 51 & 52 Vict. c. 50), and the Trade Marks Rules, 1888, and the Instructions issued by the Comptroller in May, 1884. As to the law of trade marks and patents, see Goodeve P. P., Chapters XIII. and XIV.

By the Act of 1888, s. 70, a trade mark when registered can only be assigned in connection with the goodwill of the business concerned in the goods for which it has been registered, and is determinable with that goodwill, i.e., it is conceived, ceases to be a trade mark within the meaning of the Act *ipso facto* on the determination of the goodwill. Section 87 provides for the registration of assignments of registered trade marks in the names of the proprietors; and see further as to registration of assignments, Rules 34 *et seq.*, and paragraph 42 of the Instructions. As to entering on the register a note of an agreement, as in this Precedent, restricting the use of a trade mark, see *Re Mitchell*, 28 Ch. D. 666.

As to using without authority the name or a colourable imitation of the name of a person carrying on business in connection with goods protected by a trade mark, or using the name of a fictitious person or of some person not *bona fide* carrying on business in connection with such goods, see the Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), ss. 2 and 3, sub-s. 3.

1. THE vendors agree to sell & the purchaser agrees to purchase for the sum of £—— the goodwill of the business known as “——,” being one of the businesses carried on by the vendors in co-partnership at ——, together with the right to carry on such business under the name or style of ——, & also the exclusive right to use the brand or trade mark —— on, *certain articles*, reserving to the vendors the right to use the said brand or trade mark on, *certain other articles*.

Agreement
for sale.

2. THE vendors, their wives & widows, shall not nor shall either of them either alone or jointly or in partnership with any other person or persons whomsoever & either directly or indirectly carry on, manage, or be concerned or interested in the business of —— within —— miles from —— aforesaid [or, in any part of the United Kingdom] nor shall they or either of them authorise their or his or her names or name or the name or style of —— & Co to be used for the purpose of any such business by any person or persons within the limits aforesaid for the period of —— years from the date of this agreement, unless the purchaser shall make default for 30 days in payment of any of the instalments of the said purchase-money, or the intestation or any part thereof as hereinafter mentioned: And the vendors or either of them will within such period (except in case of such default as aforesaid), if & when required by the purchaser, recommend the said intended new firm to the customers of the said late firm.

Vendors
not to
carry on
trade, &c.
(c).

3. THE purchase-money, with interest at the rate of —— per cent. per annum from the —— day of —— next upon the unpaid part thereof for the

Payment of
purchase-
money by

(c) As to agreements in restraint of trade, see p. 30, note. As to the right of the vendor of a goodwill to carry on business and solicit the customers, see *Trego v. Hunt*, 1895, 1 Ch. 464, reversed [1896] A. C. 7, overruling the reasoning in *Pearson v. Pearson*, 27 Ch. D. 145; *Vernon v. Hallam*, 34 Ch. D. 748; *Re Irish*, 40 Ch. D. 49 (a case of a manager of a business sold under the Court), see also *Smith v. Hancock*, [1894] 1 Ch. 209; *ib.* 2 Ch. 377 (a case of wife of vendor). An assignment of the goodwill of a business carries with it the right for the purchaser to use the vendor's name, so far as such user does not expose the vendor to any liability by holding him out as the real owner of the business; see *Levy v. Walker*, 10 Ch. D. 436; *Gray v. Smith*, 43 Ch. D. 208; *Thynne v. Shove*, 45 Ch. D. 577. If the vendor is not restrained from carrying on the business elsewhere, the following may be added at the end of the clause (as to which see *Baines v. Geary*, 35 Ch. D. 154):—“And will not at any time solicit any of the customers of the said late firm.” As to what stipulations may be agreed to on the sale of a business by the vendor's attorney acting under a general power, see *Hawksley v. Outram*, [1892] 3 Ch. 359.

As to sale
of goodwill.

instal-
ments (a).

time being, shl be pd by the pchaser to the vendors as follows, namely, the sd pchase-moy by four eql instalmts of £—— each, payable as follows, &c., & the intt on the pt of the sd pchase-moy for the time being remaing unpd shl be pd on the same respive days: Provd that if any instalmt of ppal or intt, or any pt thof, shl remain unpd after 30 days from the day so appted for the paymt thof, then the whole of the sd pchase-moy, or of the unpd pt thof, with the intt thron, shl become immedly due & payable.

Vendors'
names may
be used in
proceed-
ings for
infringe-
ment.

4. So long as the pchaser shl pform in all respts his pt of this agrmt, the vendors shl, in the event of any infringemt by any other pson or psons of the sd brand or trade mark —— by the use thof on any, *specified articles*, at the reqt of the pchaser, & upon being previously pperly indemnified agst all costs, damages, & expses in respt thof, allow their names to be used in any pcdgs wch may be advised agst the pson or psons guilty or suspected of such infringemt.

Title and
convey-
ance.

5. THE vendors shl on or bfe the —— day of —— next, show a good title to the sd goodwill & trade mark to the reasble satisfon of the pchaser, & they & all other necy pties (if any) shl, upon or at any time after the paymt of the sd pchase-moy in full, exte & do all such instrumts & things as shl be reasbly required by the pchaser, & at his expse, for vestg in him the sd goodwill & the rt to use the sd trade mark, & for orwise carryg into effect this agrmt (b). In WITS, &c.

As to lien
for unpaid
purchase-
money.

(a) See another form providing for payment by instalments, *infra*, p. 343. There is no implied lien for unpaid purchase-money on chattels, nor, it is conceived, on goodwill comprised in the sale of a business; and an express lien or charge (so far as concerns chattels) would require compliance with the Bills of Sale Acts, 1878 and 1882; see *Coburn v. Collins*, 35 Ch. D. 373. As to a sale in consideration of the vendor receiving a share of the profits by way of annuity, see the Partnership Act, 1890 (53 & 54 Vict. c. 39), ss. 2 & 3, which by s. 48 repeals Bovill's Act, 28 & 29 Vict. c. 86.

As to
stamp.

(b) This agreement is as an agreement liable to duty under the Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 59. Goodwill—and no doubt also a trade mark, being "property" within the meaning of such section (see *Potter v. Commissioners of Inland Revenue*, 10 Ex. 147; *Commissioners of Inland Revenue v. Angus*, 23 Q. B. D. 579, decided under former Acts), and not being within the exemption of "goods" in that section (*South v. Finch*, 3 Bing. N.C. 506); see *ante*, p. 317.

VIII.

CONTRACT *for Sale of a BUSINESS and the ASSETS thereof as a GOING CONCERN by the LIQUIDATOR of a COMPANY under a Voluntary Winding up to another COMPANY (c).*

PARTIES. The X. Co Limd in liquidon (hinafter called the vendors) by A., of, &c., the liquidator, 1. The Y. Co Limd, whose registered office is at, &c. (hinafter called the pchasers), by B., of, &c., their duly authorised agent, 2. Whby it is agrd as follows :

1. THE vendors shl sell & the pchasers shl pchase for the sum of £—— & upon the terms & subjt as hinafter mentd : Agreement to sell.
 1. All the —— works with the freehd & leasehd lands, &c., known as, &c., & the other lands, bldgs, water-rts, wayleaves, hds & premes held in connection thrwith situate, &c., wch are specified in the 1st & 2nd pts of the schdle hrto. 2. All fixed & moveable machy, engines, plant, tools, stores, furniture, horses, carts, barges & vessels belonging to or used by the vendors in connection with the sd works, lands, bldgs & premes in the same condon as the same resply were on the —— day of —— last. 3. All patent rts & trade marks belongg to the vendors in connection with their sd business, & the goodwill of the sd business as a going concern, with the rt to use the name of the vendors in connection thrwith, & 4. The business books of the vendors at their place of business ——.

2. THE sale shl include the benefit of any current insurces agst fire of any of the ppties included in the sale, &c. Insurances. See p. 269, form xvii.

3. THE ppties are sold subjt to the rents, covts, condons, reservons & exceptions contd in the leases or agrmts for leases under wch the leasehd portions thof are held, & to any subsistg undertenancies of any houses, cottages, or other pts of the ppties, & to all outgoing, easemts & rts affectg the same. Sale sub-
ject to
rents, ease-
ments, &c.

(c) See the last Precedent, and notes thereto: as to the powers of a liquidator, see the Companies Act, 1862, ss. 133, 135, and Companies (Winding-up) Act, 1890(53 & 54 Vict. c. 63), s. 12.

4. [*Provon as to rents & outgoings up to & after complon & apportionmt, &c., & as to leases, &c., havg been produced prior to the contract. See CONDONS OF SALE.*]

Apportion-
ment of
purchase-
money (a).

5. THE sd pchase-moy shl be apportioned betn the ppties for the ppose of convce or transfer & stamp duty as follows, namely, £—— shl be the price of the freehd ppties, £—— shl be the price of the leasehd ppties, £—— shl be the price of the patent rts, & £—— the price of the trade marks, & the remr of the sd pchase-moy shl be the price of the other ppties included in the sale.

Possession.

6. THE pchasers shl be at liberty forthwith or at any time after the signature of this agrmt to enter into posson of the sd ppties, & to have the use thof for the ppose of the sd business pendg the complon of the pchase, upon their paying to the sd liquidator the sum of £—— as a deposit & in pt paymt of the sd pchase-moy, but such entry shl not be deemed to be an acceptce by the pchasers of the vendors' title, or a waiver of any objon or requon wch they might orwise be entled to make in respt thof. In the event of such posson being taken the pchasers shl pendg the complon of the pchase, pay all expses & outgoings incurred in respt of the premes, other than rents, rates, & taxes, up to the time fixed for complon, & shl keep the same in pper repair, order, & condon, reasble wear & tear excepted, & in case this agrmt for sale shl be annulled the pchasers shl forthwith redeliver posson of the sd premes to the vendors in such repair, order, & condon as afsd, the sd deposit being in that event repd to the pchasers witht intt & subjt to the dedon thfrom of any moys wch may be payable by the pchasers to the vendors under this agrmt or in respt of any breach thof.

Comple-
tion.

7. THE pchase shl be completed & the pchase-moy or the

As to ap-
portioning
the
purchase-
money,
and stamp
duty.

(a) As to apportioning purchase-money for stamp duty, section 58 (1) of the Stamp Act, 1891, enabling the parties to make the apportionment as they think fit, only applies where all the properties comprised in the sale are actually conveyed, and not to a case such as the above where the sale includes chattels or other things not requiring a conveyance. But in that case there can be no objection to the apportionment being made by the contract, if done fairly and *bond fide* according to the estimated values. As to the liability of the contract itself to *ad valorem* duty, see p. 317, note. In the case from which the above Precedent was taken only a 6d. stamp was affixed to the contract.

balce thof pd to the sd liquidator on the — day of —, as from wch day the pchasers shl on paymt of the pchase moy be entled to the posson of the premes unless posson shl have been previously given as afsd, & if the pchase moy or the balce thof is for any reason not then pd, the pchasers shl pay intt thron or on so much thof as remains unpd from that day until complon at the rate of, &c.

8. UNLESS & until posson of the premes shl be given to the pchasers as afsd, the sd business will be continued by the sd liquidator as far only as regards the exon & carrying out of now pendg orders & contracts until the complon of the pchase, & in case the same is not completed on the sd — day of —, the same shl from that date be deemed to be so continued on behalf of the pchasers, & the then pendg orders or contracts shl be equitably apportioned on that day as regards the benefit & burden thof betn the vendors & pchasers.

Carrying on
of business
(b).

9. UPON the complon of the pchase a circular in a form to be approved by the vendors' solors shl be sent by the vendors to all their customers & agents announcg the transfer of the sd business & goodwill to the pchasers.

Circular.

10. UPON paymt of the pchase-moy or the balce thof & intt thron, if any, the pchasers shl be entled to pper assurces or transfers of the sevl ppties included in the sale from the vendors, & other necy pties, if any, to be prepared by & at the expse of the pchasers.

Convey-
ance.

11. [*Condons as to title to the freehd & leasehd ppties.*]

12. [*Arbitron Clause. See ARBITRON.*] IN WITS, &c.

[*Schdle.*]

(b) See also the forms above, at p. 313, and *post*, p. 344.

IX.

CONTRACT *or* SALE of NEXT PRESENTATION, *the Vendor*
being the INCUMBENT (a).

- Parties.** *PARTIES*, A., vicar of, &c., in the Coy of — (hinafter called the vendor), 1. B. (hinafter called the purchaser), 2.
- Agreement to sell.** 1. THE vendor agrees to sell & the purchaser agrees to purchase the first & next nomination, presentation, & free disposal of & to the vicarage & parish church of, &c., as and when shall or may happen to accrue or arise upon or in consequence of the vacancy or avoidance of such vicarage or living by death or relinquishment, or by whatever other means the said church shall first or next happen to be void at the price of £ —.
- Title.** 2. THE vendor is or claims to be absolutely entitled to the advowson of the said vicarage subject to the contingency of his title thence being displaced by his having issue male, & except that the legal estate is outstanding in the trees or tree of an indenture dated, &c., & the title having been submitted to the purchaser, the same shall be deemed to be accepted by him subject as aforesaid without further investigation.
- Completion.** 3. THE purchase shall be completed at the office of —, the vendor's solicitor at, &c., on the — day of — next, on which day the vendor shall on payment of the said purchase-money in manner hereinafter mentioned execute a proper assurance of the next presentation to the said benefice to the purchaser subject to the aforesaid contingency & to the legal estate remaining outstanding, such assurance to be prepared by & at the expense of the purchaser.
- Bond.** 4. THE purchaser shall on the completion of the purchase give to the vendor a bond conditioned for the payment to the vendor of the said purchase-money within 6 calendar months after the vacancy of the said living, with interest thereon in the meantime at the rate of 4 p.c. p.a. payable quarterly, the first quarterly payment thereof to be made on the — day of —.
- Vacancy before completion.** 5. In the event of a vacancy occurring in the said living by —————
- (a) As to the law see the references in the notes to precedent of conveyance of an advowson or next presentation, CONVEYANCES ON SALE. Title for at least 100 years must be shown. A list of presentations should accompany the abstract. The list should be verified by a search in the Bishops' Registry of Presentations.

the resignon or death of the vendor bfe the complon of the pchase, the vendor or his trees or tree shl on the exon by the pchaser of the sd bond psnt thrt to such pson being duly qualified as shl be nominated by the pchaser.

6. UPON the death of the vendor witht havg had male issue, a convce of the legal este of the sd next presenton to the sd benefice to the pchaser, his hrs or assns shl, if required by him or them, be procured at his or their expse. Legal estate.

7. If the next presenton to the sd benefice shl devolve on the Crown by reason of the promotion of the vendor to a bishopric, this agrmt & the bond to be given as provd by paragraph 4 shl be void, & any intt wch shl have been pd by the pchaser to the vendor under the sd bond shl be repd. Next presentation devolving on Crown.

[8. THE pchaser shl keep the vendor harmless & indemnified from all actions & other pcdgs in regard to & from all claims in respt of dilapidons in, upon, or about the sd church & vicarage of — aisd, & the bldgs, lands, grounds, & appurts thof, & whether such actions or other pcdgs be instituted & such claims shl arise durg the time the vendor shl be vicar of — aisd, or upon the sd benefice next becoming vacant, & a covt to this effect shl be inserted in the sd convce.] IN WITS, &c. Dilapidations.

X.

AGREEMENT EXTENDING *the* TIME FOR COMPLETION of a Purchase and otherwise modifying the Contract. SUPPLEMENTAL to the original Contract (b).

ARTICLES of AGRMT made, &c., betn A. (hinafter called the vendor), of the one pt, & B. (hinafter called the pchaser), of the other pt, supplemental to an agrmt dated, &c., & made betn the same pties for the sale by the vendor to the pchaser of the — este for the sum of £— (hinafter called the origl agrmt), IT IS HBY AGRD as follows :—

1. THE time for complon of the sd pchase shl be extended from the — day of —, being the day mentd in the origl Extension of time for completion.

(b) This may be used for a tenant for life selling under the Settled Land Acts; see the power in s. 31 of the Act of 1882, to vary contracts.

agrmt, to the — day of —, & in this respt time shl be of the essce of the contract, but nevs the pchaser may complete the pchase on any earlier day, on givg 14 days' notice of his intention in that behalf to the vendor or his solor.

Requisi-
tions.

2. THE pchaser havg accepted the title shown by the vendor as a good & perfect title accdg to the origl agrmt, no further requon or objon in respt of the title, except as to any mre arisg after the date of this agrmt, shl be made by him.

Possession
and rent
in lieu of
interest.

3. THE pchaser may forthwith, or at any time, enter upon & take posson of the premes, as tenant of the vendor, at the annl rent of £—— (being equivalent to intt on the sd pchase-moy at the rate of — p.c. p.a.), such rent to commence from the date of this agrmt, whether such posson is taken or not, & to be pd on the complon of the pchase or on demand, & to be accepted by the vendor in satisfon of the intt on the pchase-moy payable under the origl agrmt, the pchaser paying all outgoing [& keepg the bldgs pperly insured agst fire, & not makg any structural alterons thrin, *if leasehd, add " & pformg the covts of the lease "*] pendg complon.

Purchaser
to pay the
difference
in case
consols
rise.

4. IF the price of $2\frac{3}{4}$ p.c. Consold stk shl, on the day of actual complon of the pchase, be higher than the price thof on the — day of —, *the day of complon under the origl agrmt*, the pchaser shl, togr with the sd pchase-moy & rent, pay to the vendor such a sum of moy as shl be eql to the price or value of the diffe betn the amt of such consold stk wch the sd pchase-moy wd have pchased on the sd — day of —, & the amt of stk wch the same sum will pchase on the day of actual complon of the pchase, at the highest price of the day in each case.

Costs.

5. ALL the costs & expses incurred by both the sd pties in relon to the negotion, preparon, & exon of this agrmt shl be pd by the pchaser.

Original
agreement
as varied
to be in
force.

6. THE origl agrmt, as hby varied, shl remain in full force, & shl be carried into effect in the same mner as if the provons of this agrmt had been inserted thrin. IN WITS, &c.

XI.

AGREEMENT *for* ENFRANCHISEMENT *of* COPYHOLDS, THE MANOR *and* the COPYHOLD *being both in settlement (a).*

PARTIES, A (Lord of the manor of — in the coy of —), 1.
B., *Copyholder*, 2. *WHAS* the sd A. is seised of the sd manor of — as tenant for life in posson under the will dated, &c., & proved, &c., of X. deced: *AND WHAS* the sd B. is equitable tenant for life under a settlemt dated, &c., of the hds hinafter descd, wch are copyhd of the sd manor, & of wch the trees of the sd settlemt are the tenants on the Ct Rolls :

Recitals.
Title of
lord and
of copy-
holder.

NOW IT IS *HBY* *AGRD* as follows:—

1. In conson of the sum of £—— to be pd by the sd B. or his trees by diron of the sd A. to the trees of the sd will of the sd X., the sd A. shl sell & convey to the sd B. or his sd trees, the freehd of ALL, &c., *pcels from the Ct Rolls*, togr with the mines & minls under the same premes, & all commonable & other rts, easemts & appurts now annexed to or held or enjoyed with the premes, free from incumbces, & freed & enfranchised from all customary & other fines, heriots, paymts & manorial rts & services whatsr.

*Agreement
for enfran-
chisement.*

(a) This form is for a case in which the parties are able and willing to enfranchise without recourse to the Copyhold Act; and as to Crown manors, see the Copyhold Act, 1894, ss. 68, 69. In most cases it is better to enfranchise under the Copyhold Act, 1894. See Part III. of the Act *EFFECT OF ENFRANCHISEMENT*. By the Settled Land Act, 1882, s. 3 (ii), a tenant for life of a manor may enfranchise any copyhold or freehold tenement held of the manor by selling the freehold or seignory to the tenant, with or without an exception or reservation of mines or minerals, or (s. 4 (7)) a regrant of any right of common or other right, easement or privilege, appendant or appurtenant to or held with the land enfranchised (which would seem to include any customary right); and the general provisions of the Act relating to sales apply to this case. By the same Act, s. 21 (v.) and s. 33, where a copyhold or freehold tenement held of a manor is in settlement, capital money under the settlement may be applied in purchasing the freehold or seignory by way of enfranchisement, and by s. 18, money may be raised by mortgage for the purpose; see form of mortgage in Vol. II. As the tenant for life has, under s. 22 (2), the control of the reinvestment of capital money, B. is the proper person to enter into the contract for the purchase.

*As to
enfran-
chisement.*

Provons as to title, & other special condons as in an agrmt for sale (a).

Comple-
tion.

2. THE sd pchase or conson-moy shl be pd, & the sd sale or enfranchisemt shl be completed on the — day of — next at the office of Messrs. — at —, & on paymt thof the sd A. & all other necy pties, if any, shl exte a pper assurse of the premes to the uses or upon the trusts of the sd settlemt with pper statutory covts by the sd B. for title & further assurse, qualified in the mner usual in the case of tenants for life (b) to be prepared by & at the expse of the sd B. or his sd trees.

Provon for paymt of intt in case of delay in complon.

Retention
of deeds,
&c.

3. THE munimts of title to the sd manor will be retained by the sd A., who shl, if required by the sd B., give to him or his sd trees a pper statutory acknmt for prodon & furnishg copies & undertakg for safe custody thof, & of the Ct Rolls of the sd manor (c) to be prepared by & at the expse of the sd B. or his trees.

Other condons as on an ordinary sale may be inserted so far as applicable, see Precedent I. IN WITS, &c.

MISCELLANEOUS CLAUSES in AGREEMENTS for SALE.

As to title
and misde-
scription.

I. THE vendor's title havg been already examined & approved by the pchaser, is accepted by him witht further investigon, & the ppty havg been inspected by him, the description hinble contd is admitted by him to be correct as to quantity & all other mres wch are discoverable by inspon.

Part of
purchase-
money to
be left on
mortgage.

II. THE pchase-moy shl be pd by the pchaser to the vendor in mner follg, namely, the sum of £—, pt thof, with intt thron (in the event of the complon of the pchase being delayed), at the rate of — p.c. p.a., from the time appted for com-

(a) The provisions of the V. & P. Act, 1874, ss. 1 and 2, and of the Conv. Act, 1881, ss. 3 (3, 6) and 4, would apply to this case; see above, pp. 224 *et seq.*

(b) See p. 239.

(c) See *Re Agg-Gardner*, 25 Ch. D. 600. As to the inspection and custody of the Court Rolls, see the Copyhold Act, 1894, ss. 62, 64.

plon until the actual complon, shl be pd upon the exon of the assurge of the premes; and the paymt of the remr thof, with intt at the rate of — p.c. p.a., from the time appted for complon of the pchase, payable half-yrly, shl be secd by a mtge in fee of the sd premes, & by the [jt & sevl] covt of the pchaser [& X., as surety for him], to be prepared by the vendor at the expse of the pchaser, & to contain such powers & provons, & be in such form as the vendor shl reasbly require, & to be exted immedly after the exon of the assurge of the premes: [AND the messe & bldgs upon the premes shl forth-

Premises to be insured.

with be insured agst loss by fire by the pchaser, or, in case of default on his pt, by the vendor, at the expse of the pchaser, in the sum of £—— at the least, in an office to be approved of by the vendor].

III. THE pchase-moy, with intt thron or on the unpd pt thof at the rate of — p.c. p.a. from the — day of —, shl be pd by — eql half-yrly instalmts of ppal amtg to £—— each, payable on the — day of — & the — day of — in each yr, the first to be pd on the sd — day of —, with the addon to each instalmt of the intt on the portion of the pchase-moy remaing unpd, but if the pchaser shl make default in paymt of any of such instalmts of ppal or intt or any pt thof for 30 days after the same shl have become due, the whole of the unpd instalmts of the sd pchase-moy, with the intt thron, shl become immedly due & payable, [& the paymt of the unpd instalmts & intt shl be secd, *by mtge, &c., as in last form, or*, "The pchase shl be completed on the — day of —, on wch day or as soon thrafter as may be, on paymt of the portion of the pchase-moy wch shl have become payable, with the intt due up to that time, the vendor will exte a pper assurge of the premes to trees, one to be nominated by the vendor & the other by the pchaser, upon usual trusts, by sale or mtge or orwise, for securg the due paymt of the instalmts of pchase-moy remaing unpd, with intt as afsd, & subjt thto in trust for the pchaser, such assurge to be prepared by the solor of the vendor at the expse of the pchaser, & to contain all such trusts, powers, & provons as in case of dispute the counsel of the vendor shl advise."]

Purchase-money payable by instalments secured by mortgage or trust deed.

IV. THE conson for the sd sale shl be an anny, or yrly sum of £——, durg the life of the vendor, commencg from the —

Consideration an annuity for

vendor's
life secured
by mort-
gage, &c.
(a).

day of —, & payable to him by eql qtrly paymts, clear of all dedons except income-tax, the first paymt to be made on the — day of — next, in case the vendor shl be then livg, & the paymt of such anny shl be secd, *by mtge, &c., as in form II., or*, “by the pchase of an anny of like amt from the Governmt or the — Co for the life of the vendor, wch shl be accepted as sufft, witht any lien or chge upon the sd hds & premes, or any other secy.”

Diminution
or increase
in value.

v. THIS contract shl not be vacated or affected by any loss or damage to the sd premes by fire (b), tempest, or orwise, or any diminon or increase in the value thof from any cause whatever (other than the wilful neglect or default of the vendor) wch may take place at any time betn the date hrof & the complon of the pchase.

Special
provisions
on sale of
business as
going con-
cern, the
purchaser
taking on
himself the
debts and
liabilities.

VI. THE whole of the ppty, with the goodwill of the business, is sold as a going concern, the pchaser takg upon himself the debts & liabilities of the vendor in pt paymt of the pchase-moy, as hinafter mentd. The furniture, fittgs, & fixtures in the shop & warehouse in — Street, & the stk of manufactured articles at the factory, & in the shop & warehouse, shl be taken & pd for by the pchaser at a valuon. The sale shl include the book & other debts owing to the vendor, & the benefit of all orders and contracts remaing unexted at the time fixed for the complon of the sale, wch shl respky in like mner be pd for by the pchaser at a valuon (due allowce being made for bad & doubtful debts). The amt of the debts owing by, & other liabilities of the vendor as they may exist at the time fixed for complon (such amt in case of diffce to be ascertained by valuon), shl be allowed in redon of the pchase-moy. The pchaser shl take upon himself, & indemnify & secure the vendor agst such contracts, debts & liabilities (the parlars thof being specified in a list or schdle), both by his psonal covt, & by a mtge & deposit of the title-deeds of the ppty sold, with pper powers, includg power in case of default to take posson & sell the ppty (exclusive of chattels psonal within the Bills of

(a) It seems that this would not create a liability to succession duty on the vendor's death, see per Lord Westbury, C., *Floyer v. Bankes*, 3 De D. J. & S. 306, 312, better reported 33 L. J. Ch. 1; nor to estate duty. Finance Act, 1894, s. 3 (1).

(b) As to fire insurances, see p. 269, note.

Sale Acts) such mtge & indemnity to be prepared by & at the expse of the vendor.

VII. THE pchaser shl be at liberty at any time to enter into posson of such pt of the premes as is in hand, but such entry shl not be deemed to be an acceptce by him of the title, or a waiver of any objon or requon wch he may then, or, but for such entry, might thrafter have made in respt of the title or orwise. *Add other provons wch may be applicable as at p. 340, clause 3, & see clause in brackets at the end of the next form.*

Purchaser to be let into possession before completion (c).

VIII. IF the counsel of the pchaser shl be of opinion that a good title cannot be made to the whole of the premes, & the defect of title is not such as is hinbfe made the subjt of compenson, the pchaser shl not be bound to complete the pchase as to any pt to wch a good title can be made, but the contract shl at his option be wholly void, & the vendor shl thrupon repay to the pchaser the deposit, togr with all expses pd or sustained by him in the investigon of the title or orwise in respt of the sd intd sale, but witht any intt up to the avoidce of the contract or other compenson. And the premes shl in such case be a secy to the pchaser for the repaymt of all such moys, with intt thron, at the rate of 5 p.c. p.a. from the time of the avoidce of the contract. [And in case the pchaser shl have entd into posson or rect of the rents of the premes, or any pt thof, he shl immedly on the avoidce of the contract, or as soon thrafter as the moys due to him, as last afsd, shl have been duly pd & satisfied, give up posson of the premes to the vendor, & shl acct to him for the net rents & profits (if any) reced by him, after deductg outgoings; but the pchaser, in case he shl have taken actual posson of the premes, shl not be liable to pay an occupon rent, or be entled to any allowce on acct of outgoings or orwise in respt thof.]

Avoiding contract if title not approved, with provision where purchaser has taken possession.

IX. IF the vendor shl fail to deduce a good title to the whole of the sd premes accdg to this agrmt, & the defect of title is not such as is hinbfe made the subjt of compenson, the pchaser shl not be bound to complete the pchase as to any pt to wch a good title can be made, but shl be entled at his option eir to

Avoiding contract if title not approved, giving purchaser compensation or option to take title.

(c) As to the procedure as to the payment of the purchase-money and otherwise, where the purchaser has been let into possession before completion, see *Greenwood v. Turner*, [1891] 2 Ch. 144.

accept such title as the vendor may be able to make, or by notice in writg to the vendor to annul the contract, & thrupon to recover from the vendor all expses pd or sustained by the pchaser in the investigon of the title, or orwise in respt of the sd intd sale, togr with the further sum of £——, as liquidated & ascertained damages for the breach of the contract on the pt of the vendor, & not as a penalty.

Time
essence of
contract on
default of
vendor.

x. If the vendor shl not deliver an abstract of his title to the pchaser, or his solor, at or bfe the expiron of one calr month from the date hrof, or shl not deduce a good & marketable title to the premes to the satisfon of the counsel of the pchaser bfe the expiron of —— calr months from the date hrof, then & in eir of the sd cases this contract shl be wholly void [shl be voidable at the option of the pchaser, provd that such option be decl'd in writg to the vendor within 1 calr month after the expiron of such last-mentd time], it being the intention of the pties hto that in such case time shl be of the essce of this contract, & the jurisdon of any ct to enforce the same wholly barred. And the vendor shl thrupon repay to the pchaser the sd deposit of £——, &c., *see clause VIII., above.*

Time
essence of
contract on
default of
either
party.

xi. If the pchase shl not be in all respts completed on the sd —— day of ——, then this contract shl, as agst the pty through whose neglect or default such non-complon shl have happened, be voidable at the option of the other pty, provd that such option be decl'd in writg to the pty in default within 1 calr month after the sd —— day of ——, it being the intention of the pties hto that in such case time shl be of the essce of this contract, & the jurisdon of any ct to enforce the same wholly barred. And in such case all expses pd or sustained by the pty not in default in the dedon or investigon of the title or orwise in relon to the premes shl be repd to him on demand by the pty in default.

Liquidated
damages
on default
of either
party (a).

xii. AND for the due pformce of the sevl stipulons & agrmts hinbfe contd on the pt of the vendor & pchaser resp'y, each of them the sd pties doth hby bind himself unto the other of them in the sum of £——, to be considered as liquidated & ascertained damages, & not as a penalty.

Reserva-
tion to

xiii. IN case the premes hby agrd to be sold shl at any time

(a) Such a clause as this is of very doubtful utility; see above, p. 220, note.

hereafter during the lives & life of the vendor & the purchaser, & the children now living of the vendor, & the survivors & survivor of such persons, or within 21 years after the death of such survivor (b), cease to be used for the purposes for which the same were sold as aforesaid, the right or option of pre-emption or repurchase thereof, at a valuation to be made by two indifferent persons, one to be chosen by each party, or their umpire, or in case of default by either party to nominate a valuer within 21 days after being required in writing so to do by the other party, then by the valuer nominated by such last named party alone, shall be reserved & secured to the vendor, his heirs & assigns, the owner or owners of the ——— estate, or (in the event of such estate having become severed or divided in ownership) the larger part in value of such estate, in manner following (that is to say), the purchasers, their heirs or assigns, shall forthwith, or as soon as may be after the premises shall cease to be used as aforesaid, make to the person or persons last aforesaid an offer in writing of the right or option of repurchasing the premises at such valuation as aforesaid, which offer shall be open for acceptance for 6 calendar months from the time of the same being made (not being later than the expiration of such 21 years as aforesaid), & the purchasers, their heirs or assigns, shall not be at liberty to sell, let, or otherwise dispose of or deal with the premises or any part thereof, for any purpose save as aforesaid, unless such person or persons shall decline such offer, or shall neglect or fail to accept the same within such time, but in the event of such offer being so declined or not accepted, the purchasers, their heirs or assigns, shall thenceforth be at liberty to sell, let, or otherwise dispose of or deal with the premises for such purposes as they may think fit, free from the restrictions contained in this clause, but subject nevertheless to the restrictions & stipulations next hereinafter contained, which are to be at all times hereafter binding on the purchasers, their heirs & assigns (that is to say), That no act or thing shall at any time hereafter be done in or upon the premises or any part thereof, which shall or may be or grow to the annoyance, nuisance, or damage of the vendor, his heirs or assigns, or his or their lessees or tenants, or any of them, or which may be calculated to depreciate or lessen the

vendor of right of pre-emption in a certain event.

Restrictive provisions as to user of premises (c).

(b) As to the necessity for this restriction of the right of pre-emption, see *London & South Western Rail. Co. v. Gomm*, 20 Ch. D. 562. It might be better to substitute the lives of the royal family, as at p. 323.

(c) For other restrictive provisions of this nature, see *CONDITIONS OF SALE*, pp. 291 *et seq.*

Right of pre-emption.

value of the afsd este of the vendor or any pt thof as residential ppty.

Reserva-
tion to
vendor of
rights of
altering
buildings
and right
to lights
(a).

XIV. THE vendor reserves to himself, his hrs & assns, & his & their lessees, full liberty to alter or rebuild at any time hrafter any of the houses or bldgs on the south or west side of the premes hby agrd to be sold, & eir on the site of the existg bldgs or on any other pt of the ground held with the same resply, & with all such windows & opengs for light & air, & in such mner in all respts as he or they may think fit, witht any consent whatever on the pt of the pchasers, their hrs or assns, being required to any such alteron or rebldg, or any rt on their pt to object thto or claim compenson, on the ground of any interference with the access of light & air to the premes hby agrd to be sold or orwise, & no windows or lights now existg, or wch may hrafter be placed in any such houses or bldgs, or the access of light or air thto, shl at any time hrafter be in any mner stopped, obstructed, or interfered with by the pchasers, their hrs or assns, or their lessees or tenants.

Costs of
agreement.

XV. THE costs of & incidental to the preparon & exon of this agrmt in duplicate shl be borne & pd by the vendor & pchaser eqly.

Vendors'
costs to be
paid by
purchaser
(b).

XVI. ALL the costs, chges, & expses incurred by the vendors of & relatg to the preparg, engrossg, & executg this agrmt, & the preparg & fair copyg the abstract & deducg & verifying the title, & the perusg, approval, & exon of the assurce & any other deeds or orwise in relon to the psnt sale, shl be borne & pd by the pchaser, who shl also pay the chges of the surveyor: employed by the vendors to survey & report upon the ppty, or, "the pchaser shl on complon pay the chges of the vendors' solors accdg to scale & the pper chges of the vendors' surveyor in relon to the sale."

Incorpora-
tion of
common
conditions
of sale of a
provincial
law society
(c).

XVII. THIS agrmt shl be deemed to incorporate the common form condons of the — Law Society (a copy whcf is hrunto annexed), so far as the same are applicable to a sale by private contract, but so that in case of any variance or inconsistency the provons of this agrmt shl prevail.

(a) Compare the form in CONDITIONS OF SALE, p. 298, and see note thereto.

(b) See another form, throwing all costs on the purchaser, in Precedent V., at p. 325.

(c) For a form of agreement for sale by private contract, referring to conditions of sale by auction, see p. 232.

CONVEYANCES ON SALE.

RECITALS (*d*).

ASSURANCES, &c.

I. WHAS by an indre, dated, &c. & made betn, *pties*, the hds hby assured (*e*) [togr with other hds] were grted to the use of, &c.

Conveyance of freeholds by grant (general in form).

(*d*) See 1 Dav. Prec., pp. 44 *et seq.*; Elph. Introd. 59. For other forms of recitals specially adapted to mortgages and settlements, see those headings. In framing recitals the possibility of their hereafter becoming useful as evidence in support of the title should often be considered; see as to this the V. & P. Act, 1874, s. 2; *Bolton v. London School Board*, 7 Ch. D. 766 (a strong decision); *Re Marsh*, 24 Ch. D. 11. As to estoppel by recital see *Clarke v. Hall*, 24 L. R. (Ir.) 316; Elph. N. & C., Interp. p. 140 *et seq.* The practice of making deeds supplemental to prior deeds so as to save recitals (as in the case of endorsed deeds), has of late come considerably into use in some cases, mainly in consequence of the Conv. Act, 1881, s. 53; see *infra*, DEEDS.

As to recitals.

(*e*) The word "assured" is used here and elsewhere instead of "grted," &c., as being of general import, and applicable to any conveyance, whether by grant, assignment, appointment, bargain and sale, or otherwise. The short form "hby assured," is for the most part used instead of "hinafter expd to be hby assured," or "hinafter descd & intd to be hby assured;" but the latter forms are often used in practice. Where several sets of parcels derived under different titles are to be conveyed by the same deed, but by different modes, *e.g.*, one by grant and another by appointment, it may be convenient to use the distinctive words "grtd," "appted," or as the case may be, instead of "assured;" if they are all conveyed together, they may be described in the parcels as, "First all that, &c., & Secondly all that, &c." and referred to as "the hds first [*or, secondly*] hinafter assured."

Mode of reference to subject-matter of conveyance.

By means of the provision in the Conv. Act, 1881, s. 49, that the word "grt" is not necessary in a conveyance of hereditaments (which however is merely a declaration of the previous law), and by the use of the word

As to use of word "convey."

The same
(particular
in form).

Variation
for sub-
recitals.

II. WHAS by an indre, dated, &c., & made, &c., [after recitg (among other things) that, *or*, "to the effect that," *or*, "after recitals whby it appeared that," &c., it is by the indre now in recital witsd that] in conson of the sum of £—— pd by the sd B. to the sd A., *or*, "for the conson thrin mentd," the sd A. grted unto the sd B., his hrs & assns, the hds hby assured [togr with other hds] to hold the same unto & to the use of the sd B., his hrs & assns.

Conveyance
to uses to
bar dower
(general in
form) (a).

III. WHAS by an indre, dated, &c., & made, &c., the hds hby assured were assured to such uses & in such mner as the sd B. shd by deed appt, & in default of such apptmt to the use of the sd B. & his assns durg his life, with remr to the use of the sd C. & his hrs [*or*, exs & ads] durg the life of the sd B., in trust for the sd B. & his assns, with remr to the use of the sd B., his hrs & assns.

Lease and
release,
and fine, or
recovery
(general in
form).

IV. WHAS by an indre of rele, dated, &c., grounded on a lease for a yr, & made betn, &c., & by a fine levied by the sd —— to the sd —— in or as of —— term in the —— yr of the reign of His Majesty, &c., & by a declon of the uses of the sd fine contd in the sd indre of rele, [*or*, by a common recovery duly suffered in psuance of the same indre of rele in the Ct of Common Pleas in —— term in the sd yr] the hds hby assured were assured to the use of, &c.

Lease and
release, and
appoint-
ment.

V. WHAS by an indre of apptmt & rele, dated, &c., grounded so far as the same operated as a rele on a lease for a yr, & made, &c., *if the recital is parlar in form*, "the sd A. appted that the hds hby assured shd thenceforth go & remain to the uses thinafter decld concerng the same, & by the indre now in recital the sd A. reled unto the sd B. & his hrs the sd hds &

"convey" in the forms in the fourth schedule to the Act, coupled with section 57 (declaring that those forms and deeds using expressions to the like effect shall be "sufficient"), the latter word has acquired an appropriateness as a term of art which it did not previously possess; and it may properly be used, if preferred, instead of "grt," or "assn" in a conveyance of any kind of property except in the cases mentioned in Elphin. Introd. 87; but the fact that the word "convey" is used in the Act, with the aid of the interpretation clause (s. 2), in a still larger sense, so as to apply even to an appointment, or a lease, or a covenant to surrender, is not of course a reason for extending the use of the word in deeds in that manner.

(a) This and the next five forms of recital of old modes of conveyance, though still occurring frequently in abstracts, can now rarely be wanted in practice; but their retention seems desirable.

premes, to hold the same unto the sd B. & his hrs, to the use, &c., *if gent in form*, "the hds hby assured were assured to the use, &c."

VI. WHAS by an indre of rele & assnmt, dated, &c., grounded so far as the same operated as a rele on a lease for a yr, & made, &c., the hds hby grted were assured to the use, &c., & the hds hby assned, were assned, &c. Lease and release, and assignment.

VII. WHAS by an indre of statutory rele, dated, &c., & made, &c., the hds, &c., were assured, &c. Statutory release.

VIII. WHAS by an indre of bargain & sale duly enrolled psuant to the statute in that behalf, dated, &c., & made, &c. Bargain and sale enrolled.

IX. WHAS by an indre, dated, &c., & made, &c., for the conson thrin mentd, the sd A. covted with the sd B. to surrender the hds hinafter covted to be surrendered to the use of, &c. Covenant to surrender copyholds.

X. WHAS [at a ct holden for the manor of — in the coy of —], on the — day of —, the hds hinafter covted to be surrendered were [psuant to the afsd covt in that behalf] surrendered by the sd A. [out of ct] into the hands of the lord of the sd manor of —, to the use of the sd B., his hrs & assns, at the will of the lord, accdg to the custom of the sd manor of —. Surrender of copyholds.

XI. WHAS [at a ct holden for the manor of — in the coy of —], on the — day of —, the sd A. was [out of ct] admitted tenant to the hds hinafter covted to be surrendered to hold at the will of the lord, accdg to the custom of the sd manor of —. Admittance to copyholds.

XII. WHAS the sd copyhd premes were on the — day of — duly surrendered to the use of the sd A., his hrs & assns [psuant to the afsd covt in that behalf], & the sd A. was on the same day duly admitted thto. Surrender and admittance (short form).

XIII. WHAS under or by virtue of an indre, dated, &c., *or as the case may be*, the hds hby, &c., were assured to or became vested in the sd A. for an este of inhance in fee simple. General recital of any assurance.

XIV. WHAS by an indre, dated, &c., & made, &c., in conson of the sum of £—— pd by the sd B. to the sd A., [the sd A. covted with the sd B. for paymt to the sd B., his exs, ads, or assns, of the sum of £——, with intt for the same at the rate thrin mentd, on the — day of — then next, & in case of default in paymt thof for paymt to him or them thrafter of Mortgage in fee of freeholds.

intt thron half-yrly as thrin expd. And by the same indre (a)] the hds hby assured were [togr with other hds] conveyed & assured by the sd A. unto & to the use of the sd B., his hrs & assns, subjt to a provo for the redmon thof upon paymt to the sd B., his exs, ads, or assns, of the sum of £——, with intt for the same at the rate & on the day thrin mentd, or, “as afsd,” [or, by way of mtge for securg the paymt to the sd B., his exs, ads, or assns, of the sum of £——, with intt for the same, as thrin expd]: [And it was thby provd, &c., *add, if need be, recital of power of sale or other clauses wch are material.*]

Mortgage
of lease-
holds by
demise or
assignment
to two
mortgagees.

XV. WHAS by an indre, dated, &c., & made, &c., in conson, &c., [recite covt for paymt if material, as in last form], the premes comprd in the hinbfe recited indre of lease were assned [demised] by the sd A. unto the sd B. & C., their exs, ads, & assns, for the residue of the sd term of — yrs grted by the sd lease [except the last day thof] subjt to a provo for the redmon thof on paymt to the sd B. & C., or the survor of them, or the exs or ads of such survor, their or his assns, of the sum of £. — with intt, &c. [or, by way of mtge for securg, &c., *see last form*]: [And the sd A. thby decld himself a tree of the nominal reversion thby reserved of the same premes for the sd mtgees subjt to such equity as might for the time being be subsistg by virtue of the provo for redmon thinbfe contd]: [And it was thby provd, &c., *recite any other clauses, as the power of sale, or in a mtge to sevl, the jt acct clause, if material.*]

Mortgage
of copy-
holds:

XVI. WHAS by an indre, &c., in conson, &c., [recite covt for paymt, if material, as in form xiv.] the hds hinafter covted to be surrendered were covted to be surrendered by the sd A. to the use of the sd B., his hrs & assns, subjt to a condon for makg void the same surrender on paymt to the sd B., his exs, ads, or assns, of the sum of £—— with intt for the same in the meantime at the rate, & on the day thrin mentd, [or, by way of mtge for securg, &c., *as above, form xiv.*]: [And it was thby provd, &c., *see last form*].

Conditional
surrender
of copy-
holds by
way of
mortgage.

XVII. WHAS on the — day of —, in conson, &c., the hds hinafter covted to be surrendered, or, “the sd copyhd hds,”

(a) In a conveyance on sale it is not usually necessary to recite the covenant for payment, or anything more than the conveyance subject to redemption.

were duly surrendered by the sd A. to the use of the sd B., his hrs & assns, subjt to a condon, *as in last form, or*, “ subjt to a condon for makg void such surrender psuant to the hinbfe recited indre of mtge.”

XVIII. WHAS by an indre, dated, &c., & made, &c., [*recite cort for paymt if material, see form xiv.*]: the freehd hds hby assured [togr with other freehd hds], were assured by the sd A. unto & to the use of the sd B. (b), his hrs & assns, & the premes comprd in the (c) hinbfe recited indre of lease, were assned [demised] by the sd A. unto the sd B., his exs, ads, & assns, for the residue of the sd term of yrs grted by the sd lease [except the last day thof], subjt as to all the sd freehd & leasehd premes to a provo for the redmon thof on paymt to the sd B., his exs, ads, or assns, of the sum of £——, with intt thron at the rate, & on the day thrin mentd: [And it was thby agrd that the sd A. shd thenceforth stand possed of the nominal revon thby reserved of the sd term of yrs in the sd leasehd premes, in trust for the sd B., his exs, ads, & assns, subjt to such equity of redmon as afsd:] And by the same indre, the sd A. covted with the sd B., his exs, ads, & assns, to surrender the copyhd hds hinafter covted to be surrendered [togr with other copyhd hds] to the use of the sd B., his hrs & assns, accdg to the custom of the manor of ——, in the coy of ——, subjt to a condon for makg void the same surrender correspondg with the provo for redmon thinbfe contd as afsd: [And it was thby provd, &c., *recite any other clauses, such as the power of sale, or jt acct clause in a mtge to sevl, wch may be material.*]

Mortgage of
freeholds,
copyholds,
and lease-
holds.

XIX. WHAS by an indre dated, &c., & made, &c., the freehd hds hby assured, were [togr with other hds] assured by the sd A. to the use of the sd B., his hrs & assns, & by the same indre, the leasehd hds hby assured were assned [demised] by the sd A. to the sd B., his exs, ads, & assns, for the residue of the term for wch the same are held, [except the last day thof, & the sd A. thby decld himself a tree for the sd B. of the

The same
(shorter
form).

(b) For a mortgage to several, say, here and subsequently, “ B. C. & D., their, &c.”

(c) For several leases, say, “ respive hinbfe recited indres of lease,” and subsequently, “ respive terms of yrs,” and so on.

nominal revon thby reserved of the sd leasehd premes as afsd,] & the copyhd hds hby covted to be surrendered were covted to be surrendered by the sd A. to the use of the sd B., his hrs & assns, by way of mtge for securg the paymt to the sd B., his exs, ads, or assns, of the sum of £——, with intt thron at the rate, & on the day thrin mentd.

Statutory mortgage of freeholds or leaseholds (a).

XX. WHAS by an indre of statutory mtge dated, &c., & made, &c., the hds hby assured were assured by the sd A. to the use of the sd B. in fee simple, [to the sd B., his exs, ads, & assns, for the residue of the sd term of —— yrs, [except the last day thof]] for securg paymt to the sd B. of the ppal sum of £——, with intt thron at the rate, & on the day thrin stated.

Mortgage of personalty.

XXI. WHAS by an indre, &c., the —— share, & all other, if any, the share & intt to wch the sd A. was entled in revon or expectcy under the sd will of the sd X. or orwise, of & in his residuary este, or the trust funds & ppty representg the same, *or as the case may be*, were [togr with other ppty], assned by the sd A. to the sd B., his exs, ads, & assns, by way of mtge, for securg the sum of £—— & intt.

Further charge.

XXII. WHAS by an indre, &c., in conson of, &c., the sd A. chged the sd hds comprd in the sd indre of mtge of the —— day of —— with the paymt to the sd B., his exs, ads, or assns, of the further sum of £—— with intt for the same as thrin mentd.

Transfer of mortgage of freeholds and leaseholds.

XXIII. WHAS by an indre, &c. [after recitals whby it appeared that there was then due from the sd A. to the sd B. upon the secy of the sd mtge [& further chge], the ppal sum of £—— with some intt (b), it is by the indre now in recital witned that] in conson, &c., the sd B. [at the reqt of the sd A., *mtgor*] assned the sd sum of £—— & the intt [due &] to become due for the same, unto the sd C., his exs, ads, & assns, & by the same indre the sd B. [at the like reqt of the sd A.] grted [& the sd A. confirmed] the sd hds & premes comprd in the sd indre of mtge, with the appurts, unto & to the use of the sd C., his hrs & assns, subjt to such eqty of redmon as the same

(a) See the Conv. Act, 1881, s. 26, and 3rd schedule.

(b) Or “and that all intt on the same had been paid up to the date of the indre now in recital,” and omit the words “due &” on the assignment of the interest.

premes were then subj't to by virtue of the sd indre of mtge [& further chge]. *Similar recital, mutatis mutandis, of assnmt of leasehds.*

XXIV. WHAS by an indre, &c., the sum of £——, being the ppal sum then owing as thrin recited under the sd mtge of, &c., & the intt due & to become due for the same, & the sd respive freehd & leasehd hds & premes comprd in the sd mtge were resp'y assned, assured, & transferred by the sd B. [with the concurrence of the sd A., *mtgor*], to the sd C., subj't as to the sd hds to the eqty of redmon subsistg thrin.

The same
(short
form).

XXV. WHAS by an indre of statutory transfer of mtge, dated, &c., & made, &c., the sd A. conveyed & transferred to the sd B. the benefit of the sd mtge.

Statutory
transfer of
mortgage
(c).

XXVI. WHAS by an indre of statutory transfer of mtge & statutory mtge, dated, &c., & made, &c., after recitals whby it appeared, &c., in conson of, &c., the sd A. conveyed & transferred to the sd C. the benefit of the sd mtge, & by the same indre the sd A., accdg to his este & by diron of the sd B., conveyed, & the sd B. conveyed & confirmed the hds hby assured to the use of the sd C. in fee simple [to the sd C., his exs, ads, & assns, for the residue of the sd term of —— yrs] for securg paymt of the sum of £——, with intt thron as thrin mentd.

Statutory
transfer
and mort-
gage com-
bined (c).

XXVII. WHAS by virtue of divers mesne assurances, acts in the law, & events, & ultimately by an indre dated, &c., & made, &c., the ppal sum owing on the secy of the sd indre of mtge with the intt thron has become vested in the sd A., & the hds & premes comprd in the sd indre of mtge [except certn pts thof wch were in the yr —— sold & conveyed to the pchaser] have become vested in the sd A., in fee simple [*or*, for the residue then unexpired of the sd term of —— yrs] subj't to the equity of redmon subsistg thrin on paymt of the sd mtge debt & intt: AND WHAS there is now due on the secy of the sd mtge the ppal sum of £——, with the sum of £—— for intt thron.

Devolution
of title to
mortgage
(short).

XXVIII. WHAS by an indre, &c. [*describg the wife as, "B.,"* then "*K.*," being a settlem't made in conson of the marre

Settlement
of real
estate with
power of
sale.

(c) See the Conv. Act, 1881, ss. 26-28, and 3rd schedule.

shortly aftwds solemnised of the sd A. & B.] certn freehd estes & hds, wch comprd the hds hby assured, were limd & settled [after the solemnison of the sd marre, & subjt to a power of apptmt wch was never exercised & has now ceased, & to certn estes & chges wch have since ceased or become satisfied] to the use of the sd A. for his life witht impeachmt of waste, & after his dece, & after sevl limons wch have since determined or become incapable of takg effect, to the use of the sd C., in tail male, with divers remrs over, *or*, “to certn uses by virtue whof the sd A. is now tenant for life in posson thof”: And it was thby provd, &c., *recite material pts of power of sale at length, or*, “And in the same indre is contd a power of sale of the sd hds, wch is now vested in the sd K. & L., as the pnt trees of the sd settlemt, & is exercisable with the consent of the sd A. as tenant for life thrunder.”

Settlement
or will, in
conveyance
under
Settled
Land Acts.

XXIX. WHAS by an indre of settlemt, &c., *or*, “the will dated, &c., & proved, &c., of X. deced,” the hds hby assured (togr with other hds) were conveyed [devised] & settled to the use, &c., *set out limons down to & includg the limon to A., the vendor*, with remrs over, & the sd settlemt [will] contains a power of sale of the sd hds & premes exercisable by the sd B. & C., *trees*, or the survors or survivor of them, with the consent, &c., *or if so*, “& the sd B. & C. were thby appted trees thof for the pposes of the Settled Land Acts, 1882 to 1890.”

The same
(short
form).

XXX. WHAS under a settlemt, &c., *or*, “the will, &c.,” the hds hby assured (with other hds) now stand limd & settled to uses under wch the sd A. is legal tenant for life in posson thof, *or*, “are now vested in the sd B. & C. upon trusts under wch the sd A. is beneficially entled to the posson or rect of the rents & profits thof during his life,” & the sd B. & C. are the trees of the sd settlemt [will] for the pposes of the Settled Land Acts, 1882 to 1890.

Appoint-
ment of
trustees by
the Court
under
Settled
Land Acts.

XXXI. AND WHAS the sd indre of settlemt [will] contains no power of sale of the sd hds & premes thby settled exercisable by or with the consent or approval of the trees thof, & no trees were thby appted for the pposes of the Settled Land Acts, 1882 to 1890, *or*, “AND WHAS at the date of the order next hinafter recited, there were not any trees of the sd settlemt [will] for the pposes of the Settled Land Acts, 1882

to 1890 :” AND WHAS by an order of the Chancery Divon made by Mr. Justice — on the — day of —, on the applon of the sd A. the sd B. & C. were appted & are now the trees of the sd indre of settlemt [will] for the pposes of the sd Acts.

XXXII. WHAS by an indre, &c. [in conson of the marre shortly aftwds solemnised of the sd A. & B.] certn hds situate in the coy of, &c., wch comprise the hds hby assured, were assured unto & to the use of the sd K. & L., their hrs & assns, upon trust [after the sd intd marre], &c., *recite material pts of the trust for sale at length, or*, “upon trust for sale with the consent of the sd A. & B., or the survor of them, durg their, his, or her life [& aftwds at the discron of the trees or tree for the time being of the same indre].”

Conveyance of freeholds in trust for sale.

XXXIII. WHAS by an indre, &c., *the convce*, the hds hby assured were conveyed to the use of the sd B. & C., their hrs & assns, upon the trusts by an indre of settlemt of, &c., *or*, “the will, &c.,” decld concerng the hds to be pchased under a power thrin contd, being (amongst other trusts) for the sale of the sd hds by the sd trees with the consent of, &c.

The same, where land purchased under power in personalty settlement.

XXXIV. WHAS under an indre of settlemt, &c., *or*, “the will dated, &c., & proved, with a codl, on, &c., in the — Registry,” [& subseqt deeds, & ultimately under an indre of settlemt, &c.], divers hds in the coy of —, wch are commonly known as the — este, stand limd & settled to uses under wch the sd A., pty hto, is tenant for life in posson thof, & the sd B. & C. are the trees of powers of sale & other powers contd in the sd settlemt, *or*, “will” [& resettlemt], & as such trees have in their hands moys arisg from sales or other dealgs wch are liable to be applied in the pchase of hds to be conveyed to the uses afd.

Settlement or will in deed conveying land to the uses thereof (short).

XXXV. WHAS by an indre of lease, dated, &c., & made, &c., *pcels in full, from lease (a)*, with the appurts thof were demised

Lease.

(a) For brevity the parcels may be described as “the messe, land, & hds, *or as the case may be*, thrin parlarly descd, situate, &c., & wch are now known as, &c.” If the lease contains reservations, add after the parcels, “subjt to the reservons or exceptions thrin contd.” In an assignment of part only of the premises in the lease, the parcels assigned will be set out in the operative part, and the parcels will be

Parcels in recital of lease.

[by the sd A.] to the sd B., his exs, ads, & assns, from the — day of —, for the term of — yrs, subjt to the paymt of the rent thby reserved, & the covts on the pt of the lessee & condons thrin contd.

Mining
lease
(short).

XXXVI. WHAS by an indre, &c., all those mines, seams, measures, or strata of coal, known as —, & also all those mines, beds, or strata of ironstone known as —, lying & being under all those lands, &c., togr with such liberties, licences, & authorities for workg or gettg the sd mines & minls or incidental thto, as are in the sd indre expd, subjt to such reservons & exceptions as are thrin mentd, were demised & grted [by the sd A.] to the sd B., his exs, ads, & assns, for the term of — yrs from the — day of —, subjt to the paymt or renderg of the surface and other rents & royalties thby reserved & made payable, & the covts on the pt of the lessee & condons thrin contd.

Several
leases
referring to
schedule.

XXXVII. WHAS by the four sevl indres of lease, the dates & pties whof are stated in the 1st & 2nd columns of the schdle hto, the sevl messes or tenemts & hds wch are shortly descd in the 3rd column of such schdle, were demised to the sd B., his exs, ads, & assns, for the respive terms & at the respive yrly rents mentd in the 4th & 5th columns thof, & subjt to the covts on the pt of the lessee & condons in such respive leases contd.

Assign-
ment of
lease.

XXXVIII. WHAS by an indre, &c., the premes comprd in the sd indre of lease with the appurts thof were assned by the sd A. to the sd B., his exs, ads, & assns, for the residue of the sd term of — yrs grted by the sd lease, subjt to the rent reserved by & covts on the pt of the lessee & condons contd in the sd lease. [*For 2 or more leases say, WHAS by an indre, &c., the premes comprd in the sd respive indres of lease with the appurts thof were assned by the sd A. to the sd B., his exs, ads, & assns, for the respive residues of the sevl terms of — yrs & — yrs, or as the case may be, grted by the sd leases resply, subjt to the rents reserved by & covts on the pt of the lessee & condons contd in the sd respive leases.*]

Variation
for two
or more
leases.

described in the recital of the lease as “ the [pce of land, messe, &] hds, hinafter parlarly descd & assned (togr with other hds) and the amount of the rent should be stated.

XXXIX. WHAS by an indre, &c., the sd K. [who was then entled to the premes demised by the sd lease for the residue then unexpired of the sd term of — yrs] assned unto the sd A. the hds hby assned, being pt of the hds demised by the sd lease, to hold the same unto the sd A., his exs, ads, & assns, for the residue of the sd term of — yrs, subjt to the yrly rent of £——, being an apportioned pt of the sd rent of £—— reserved by the sd lease, & to the covts by the lessee & condons thenceforth to be pformed & observed in respt of the premes thby assned, & by the same indre the paymt by the sd K. & A. resply & their respive exs, ads, & assns of their respive portions of the sd rent of £——, & the pformce & observe by them resply of the covts and condons of the sd lease in respt of the premes vested in them, & their mutual indemnity in respt thof were secd by mutual covts in that behalf thby entered into by the sd K. & A. resply & by mutual powers of distress & entry thby grted by them upon their respive portions of the premes.

Assign-
ment of
part of
leaseholds
at an ap-
portioned
rent.

XL. WHAS by virtue of divers mesne assurances, acts in the law, & events, & ultimately by an indre, dated, &c., & made, &c., the premes comprd in the sd indre of lease have become absolutely vested in the sd A. for all the residue of the sd term of — yrs, subjt to the rent reserved by & covts & condons contd in the sd lease. [*For 2 or more leases say, WHAS by virtue of, &c., the premes comprd in the sd sevl indres of lease have become absolutely vested in the sd A. for all the residue of the sd terms of — yrs & — yrs, or as the case may be, subjt to the rents reserved by & covts & condons contd in the sd leases resply.*]

Devolution
of title to
lease.

Variation
for two
or more
leases.

XLI. WHAS by an indre, dated, &c., & made, &c., & wch was duly acknowed by —, or, “enrolled,” psuant to the statute in that behalf.

Deed
acknow-
ledged or
enrolled.

XLII. WHAS X., late of, &c., deced, by his will, dated, &c., after certn specific devises & other disposons not affectg the hds hby assured [covted to be surrendered], gave & devised the residue of his freehd & copyhd estes & hds unto, &c. [unto

Will
containing
general
devise (a).

(a) In the case of a will before the Wills Act, 1 Vict. c. 26, which came into operation on 1st January, 1838, it is usual to say, “WHAS A., &c., by his will, dated, &c., & duly attested in mner then required

As to wills
before the
Wills Act.

Variation for trust for sale.	& to the use of the sd A. & B., their hrs & assns, upon trust, &c., <i>recite trust for sale, as far as material, at length, or</i> , “upon trust for sale & with power to give rects for the pchase-moy in mner thrin mentd”]: <i>Death of testor & probate, see p. 365</i> :
Seisin of testator.	AND WHAS the sd testor was, at the time of his dece, seised in fee simple of the freehd hds hby assured [seised of the copyhd hds covted to be surrendered for an este of inhance accdg to the customs of the respive manors of wch the same are held].
Specific devise.	XLIII. WHAS X., late of, &c., deced, duly made his will, dated, &c., & thby gave & devised the hds hby assured, with the appurts thof [by the description of, &c.] unto, &c. <i>Death & probate, see p. 365.</i>
Will devising freeholds subject to annuities and a term.	XLIV. WHAS A., late of, &c., deced, duly made his will, dated, &c., & thby gave & devised the hds hby assured (subjt to certn annies or rent-chges thby limd or devised to L. & M. resply & their respive assns durg their respive lives, with the usual powers & remedies for recoverg paymt thof when in arrear, & to a term of — yrs, commencg from the sd testor's dece, thby limd to trees upon certn trusts for, &c.) to the use of, &c.
Codicil	XLV. AND whas the sd testor by a codl to his sd will, dated, &c., after recitg, &c., gave & devised, &c.
Deed poll	XLVI. WHAS by a deed-poll, dated, &c., under the hand & seal of the sd A., &c. [<i>if by a Co</i> , under the common seal of the sd Co & the hands of 3 of the dirors thof, &c.].
Bond.	XLVII. WHAS by a bond or obligon, dated, &c., under the hand & seal of the sd A., the sd A. became bound to the sd B., in the sum of £—— with a condon for makg void the same upon paymt, &c., <i>or</i> , “conditioned for the paymt, &c.,” <i>or</i> ,
Variation where re- citals are recited.	for devisg real este, &c.; ” and the recital of the seisin should state that the testator “was at the date of his will & thenceforth until his dece, seised, &c.”
As to wills of real estate.	The fact that probate is not necessary to complete the title of a devisee of real estate is sometimes treated as a reason for not reciting it in that case; but where powers over the real estate are given to the executors, it is obviously proper to insert the recital. And in any case, as the probate affords strong <i>prima facie</i> evidence of the validity of the will, the recital supplies useful information, and should be inserted. As to the grant of probate of wills dealing with real estate only, see <i>Re Hornbuckle</i> , 15 P. D. 149.

“with a condon thrunder written whby after recitg, &c., it was provd, that upon paymt, &c., the sd bond shd be void.”

XLVIII. WHAS by an indre dated, &c., endorsed on [supplemental to] the hinbfe recited indre of settlemt, & made, &c., [in exercise of a power for that ppose contd in the sd indre of settlemt,] the sd A. & B. resply were duly appted by the sd X. to be trees of the same indre in the place of the sd L. deced, & of the sd M. who retired from the treeship thof, & by the indre now in recital, or orwise, the trust este & premes wch were then subjt to the trusts of the sd settlemt were duly assured or transferred so as to vest in the sd A. & B. jtly with the sd C. [or, it was thby decld by the sd X. that the trust este & premes, &c., shd vest, &c.].

Appoint-
ment of
new
trustees.

XLIX. WHAS by an indre bearg even date with, & exted bfe, or, “already prepared & engrossed & intd to bear even date with & to be exted immedly after,” or, “bearg date the day next bfe the day of the date of,” these psnts, & made betn, pties, or, “the same pties as these psnts,” the sd hds & premes have been, or, “are intd to be,” conveyed, &c.

Deed of
even date
or dated
the day
before.

L. WHAS by the award, dated, &c., of the Commrs appted under an Act of Parliament of the — & — yrs of her psnt Majesty, c. —, intituled, &c., (& wch award was duly confirmed by the Inclosure Commrs for England & Wales (a) on the — day —), the pces of land, allotmts, & hds hinafter covted to be surrendered, were (togr with other hds) allotted & awarded to the sd A. for or in respt of [or in exchange for] the sd copyhd hds comprd in the hinbfe recited surrender of, &c. [or certn pts thof].

Award of
Inclosure
Commis-
sioners.

LI. WHAS by an award of the Copyhd Commrs (a), dated, &c. [after recitg that the enfranchisemt of the sd hds had been duly required accdg to the provons of the Copyhd Acts, & that A., the lord of the sd manor, had consented in writg to the enfranchisemt extendg to the rts reserved by the Copyhd Act, 1852, sec. 48, [Copyhd Act, 1894, s. 23] & that the amt to be pd for such enfranchisemt had been ascertained under

Award of
enfran-
chisement.

(a) If since the Settled Land Act, 1882 (see s. 48), say, “the Land Commrs for England;” or if since the 12th August, 1889 (see the Board of Agriculture Act, 1889), the Act 52 & 53 Vict. c. 30, s. 2 (1) (b), “the Board of Agriculture.”

the provons of the Copyhd Act[s] to be the sum of £—, & that such sum had been duly pd under the diron of the sd Commrs, & that all other acts required by the sd Acts previously to the confirmon of the award now in recital had been duly done & pformed:] The sd Commrs, in psuance of the powers vested in them by the Copyhd Acts, enfranchised the sd hds with their appurts, [& did also, by virtue of the consent afsd, enfranchise the same from all the rts reserved by the Copyhd Act, 1852, sec. 48, *or*, “the Copyhd Act, 1894, s. 23:”] To be holden as freehd thenceforth dischged from all incidents of copyhd or customary tenure.

Private Act
of Parlia-
ment.

LII. WHAS by a private Act of Parliament made & passed in the — yr of the reign of her psnt Majesty (chapter —), intituled, &c., after recitg (among other things) that, &c., it was enacted, &c.

TITLE.

Seisin in
fee in pos-
session or
reversion.

I. WHAS [under the will of X., late of, &c., deced, dated, &c., *or*, “under an indre dated, &c., & made, &c.”] the sd. A. is seised of the hds hby assured in fee simple in posson, *or*, “in revon expectant on the dece of B., of, &c.” free from incumbees [except a lease, &c.].

Married
woman's
seisin as
separate
estate (a).

II. WHAS the sd A., who intermarried with the sd B. on the — day of —, is seised of the hds hby assured in fee simple in posson free from incumbees as her separate ppty, independently of the sd B. [under an indre, &c., *or*, “the will of, &c.”].

Married
woman's
seisin. Old
law.

III. WHAS the sd A., & B. his wife, in rt of the sd B., are seised, &c.

Title to
copyholds.

IV. WHAS the sd A. is seised of the copyhd hds hinafter covted to be surrendered for an este of inhance to him & his hrs, accdg to the custom of the manor of —, in the coy of —, of wch the same are held.

Seisin of
freeholds
and copy-
holds inter-
mixed (b).

V. WHAS the sd A. is seised in fee simple of such portions of the hds hinafter descd as are of freehd tenure (& wch portions

(a) See the Married Women's Property Act, 1882, ss. 1, 2, 5; and the Married Women's Property Act, 1893.

(b) As to freeholds and copyholds being intermixed, in case of enfranchisement, see Copyhold Act, 1894, repealing, and by s. 52 replacing, the Copyhold Act, 1887, s. 42.

comprise or are believed to comprise — acres or thrabts, but are intermixed with or orwise undistinguishable from the copyhd or customary portions thof hinafter mentd, or are alleged so to be), & is seised of the other portions of the same premes wch are of copyhd or customary tenure (& wch comprise or are believed to comprise — acres or thrabts), for an este of inhance, &c.

VI. WHAS [under, &c., *as in form I.*], the sd A. is seised or entled in fee simple in posson of or to, *or*, “has an absolute power of apptmt over,” the hds hby assured, subjt to two sevl annies or rent-chges of £—— & £—— by the will, dated, &c., of L., deced, bequed to the sd B. & C. resply durg their respive lives, & wch were by the sd last-mentd will chged on the premes hinbfe mentd, togr with other hds, with usual powers & remedies for recoverg paymt thof, *or*, “subjt to a mtge in fee simple of the same premes (togr with other hds), for securg £—— & intt, created by an indre, dated, &c., & made, &c., & wch mtge was by an indre, dated, &c., & made, &c., transferred to & is now vested in the sd, &c.”

Title subject to rent-charges or mortgage.

VII. WHAS the sd A. is seised in fee simple in posson of the hds hby assured, subjt [to the sevl annies & rent-chges specified in the first column of the first schdle hto, wch were created or chged thron by the respive instrumts mentd in the second column of the sd schdle, & are payable to the sevl psons mentd in the third column of the sd schdle, & subjt also] to the sevl mtge debts or sums mentd in the first column of the second schdle hto, & the intt thron resply, wch respive debts or sums & intt are sevlly secd by the respive indres mentd in the second column of the sd second schdle, & are now vested in the sevl psons mentd in the third column of the sd second schdle: AND WHAS [all the sd annies & rent-chges have been pd, &] the intt on all the sd mtge debts or sums have been pd up to the date of these psnts.

The same by reference to schedule.

VIII. WHAS under, &c., *see form I.*, the sd A. is seised as tenant for life in posson witht impeachmt of waste of the hds hby assured, with remr to the sd B. in tail male, *or*, “in fee simple” [subjt to the incumbces specified in the first schdle hto, wch affect the inhance of the sd este, & to the incumbces specified in the second schdle hto, wch affect the life este of the sd A.].

Title for life, with remainder in tail or fee.

The same.
Another
form.

IX. **WHAS** under, &c., the hds hby assured now stand limd & settled [subjt, &c.,] to the use of the sd A. for his life [with remr to trees durg his life upon trust to preserve contingent remrs,] with remr in the events wch have happened to the sd B. in tail male, with divers remrs over, *or*, "in fee simple."

Freeholds
under
settlement,
and other
instru-
ments.

X. **WHAS** under or by virtue of an indre, dated, &c., & made, &c., & by virtue of other assurances, instrumts, or means subseqt thto, divers messes, lands, tithes, & hds situate or arisg in the parishes of — in the coy of —, & commonly known as the — este, stand limd & settled to the use of, &c.

Copyholds
in settle-
ment.

XI. **WHAS** under, &c., the copyhd hds hby, &c., wch are held of the manor of —, & the legal este whof is vested in trees or a tree, stand settled upon trust for the sd A. for his life, with remr upon trust for the first & other sons of the sd A. successively in tail genl, with divers remrs over.

Title as co-
parceners
or co-heirs
in gavel-
kind.

XII. **WHAS** the sd A. & B., as the only chln & co-heiresses-at-law, *or*, "the only sons & co-hrs accdg to the custom of gavel-kind," of C., late of, &c., deced, are seised of the hds hby, &c., in fee simple in posson free from incumbces as co-parceners.

Title as
joint
tenants,
or tenants
in common.

XIII. **WHAS** the sd A. & B. are seised of the hds hby, &c., in fee simple in posson free from incumbces as jt tenants, *or*, "as tenants in common in eql shares," *or*, "in the shares & proportions follg, namely, the sd A. is entled to one eql undivided fourth share thof, & the sd B. to the remaing three-fourth shares thof."

Title to
stock.

XIV. **WHAS**, under the will of K., of, &c., dated, &c., & proved, &c., the sd A. is entled to one eql — share of & in the sum of £—— 2½ p.c. Consold. Stk., now standg in the names of, &c., subjt to the life intt of B., of, &c., thrin [& subjt to the contingency of, &c.]

Title to
reversion-
ary legacy
or interest
in person-
alty under
will of
married
woman.

XV. **WHAS** under or by virtue of the will or testy apptmt of B., deced, late the wife of C., deced, bearg date, &c., & proved, &c., & made in psuance of a power of apptmt contd in the will of D., deced, dated, &c., & proved, &c., the sd A. is entled to a legacy or sum of £——, payable (subjt to duty) upon the dece of X., out of certn trust funds & secs in the sd will or testy apptmt of the sd B. mentd or reld to, & wch now consist of the sum of £——, &c., stk, & £—— secd on mtge, respdy standg in the names of or vested in E. & F. as trees under the will of the sd D.

XVI. **WHAS** the sd A. is entled to the poly [sevl pols] of assurse on his own life hby assned [subjt to the chges or incumbces thron hinafter mentd].

Title to policy or policies of assurance (a).

XVII. **WHAS** the sd A. is entled to certn engines, fixed & movable machy, plant, utensils, furniture, materials for manufacture, manufactured goods, stk-in-trade, & other chattels & effects used in, or belonging to his sd business & trade [wch are specified in the 1st schdle hto], & is also entled to certn book debts [the parlars whof are contd in the 2nd schdle hto, *or*, "in the books of acct of his sd business"], & has also entd into or obtained, & is entled to the benefit of divers contracts & orders [wch are specified in the 3rd schdle hto] for the supply of articles & things manufactured by him, or orwise relatg to his sd business.

Title to tradeplant, book debts, contracts, &c.

MISCELLANEOUS.

I. **WHAS** these psnts are supplemental to an indre dated, &c., & made, &c., being a convce of the — este to the sd A. in fee simple, *or*, "a mtge of the — este to the sd A. for securg the sum of £— & intt," *or*, "a settlemt of the — este under wch the sd A. is now entled as tenant for life to the hds hby assured" (hinafter called the "convce," *or as the case may be*).

Recital making the conveyance supplemental to a prior instrument (b).

II. **WHAS** these psnts are supplemental to the sevl indres & deeds poll the parlars & nature whof, togr with the names or descriptions by wch the same resply are hinafter reld to, are specified in the schdle hto (c).

The same. Where there are several prior deeds.

III. **WHAS** the sd testor died on the — day of — witht havg revoked or altered his sd will, wch was duly proved by

Death of testator and

(a) It is generally more convenient to give the particulars of the policies in the operative part; and it saves trouble in preparing the notices of the assignment to be given to the offices. If the particulars are given in the recital, say "entled to a policy of assurse effected on his own life & in his own name for the sum of £— with the — Assurse Socy, dated, &c., & nod. —, under the annl prem of £—."

(b) See the Conv. Act, 1881, s. 53, and above, p. 71, note.

(c) The schedule may be divided into four columns, containing the dates of the instruments, the parties, a short statement of the nature of each deed, and the name or short title by which it is referred to.

probate
of will.

Variation
where one
executor
does not
prove (a).

Death of
testator,
and pro-
bate of will
and codicil,
the codicil
not being
recited.

The same
where the
codicil is
recited.

Proof of
will in
Scotland,
and confir-
mation in
England.

the exs thrin named [except the sd K.] on the — day of —, in the Prerogative Ct of the Archbishop of Canterbury, *or, other ecclesiastical ct, or*, “in the Ppal [the — district] Registry of the Ct of Probate,” *or*, “in the Ppal [the — district] Registry of the Probate Divon” [the sd K. havg renounced probate thof, *or*, “power being reserved to the sd K. to prove the same, but wch he has not done, & he has since renounced probate & disclaimed the trusts thof”].

IV. WHAS the sd testor died on the — day of — witht havg revoked or altered his sd will, save by a codl dated the — day of —, wch did not affect the disposons hinbfe recited, & the sd will & codl were duly proved, &c., *as in last form*.

V. WHAS the sd testor died on the — day of — witht havg revoked or altered his sd will, save as afsd, & the sd will & codl, &c., *as in form III*.

VI. WHAS the sd A. died on the — day of — domiciled in Scotland, witht havg revoked or altered his sd will: AND WHAS (b) the sd S. & T., as such exs nominate, have obtained confirmon of the sd will from the Commissary [sheriff (c)] of the Coy of — in Scotland, & the same was duly recorded in the books of Council & Session on the — day of —: AND WHAS such confirmon has been pduced in the Ppal Registry of the Probate Divon of the High Ct of Justice in England, & a copy thof deposited with the Registrar [(d) togr with a certified copy of the interlocutor of the sd Commissary, findg that the sd A. died domiciled in Scotland], & such confirmon was sealed with the seal of the sd Probate Divon on the — day of —.

Probate.

(a) The jurisdiction of the ecclesiastical courts as to probate and administration was abolished by the Act 20 & 21 Vict. c. 77, creating the Court of Probate, which came into operation on the 11th January, 1858; and the latter Court was converted into the Probate Division of the High Court of Justice by the Judicature Act, 1873, which came into operation on the 1st November, 1875. For recitals of wills, see p. 359, *et seq*.

(b) See 21 & 22 Vict. c. 56. That executors under a Scotch will can, after the confirmation has been sealed by the Probate Division, make a title to English leaseholds, see *Hood v. Barrington*, 6 Eq. 218.

(c) See 39 & 40 Vict. c. 70, s. 35, *et seq*.

(d) If the confirmation was on or after 1st October, 1876, the words in this bracket should be omitted, see 39 & 40 Vict. c. 70, s. 41.

VII. **WHAS** the sd A. died on the — day of — havg by his will, dated, &c., appted the sd X. exor thof, & the sd will was duly proved by the sd X. on the — day of — in the — see form III, &c.

Death, and appointment of executor.

VIII. **WHAS** the sd A. died on the — day of — intestate & leavg the sd B. his widow, & the sd C. his eldest son & hr-at-law [& customary hr accdg to the custom of the sd manor of —] [the sd C. & D., his co-heiresses-at-law], & the sd B., C. & D. his statutory next of kin, & lres of admon of the psonal este & effects of the sd A. were on the — day of — grted by the — Ct, *or as the case may be, see form III.*, to the sd B.

Death intestate, heirship, next-of-kinship, and administration (c).

IX. **WHAS** the sd A. died on, &c., intestate as to the sd hds & premes, &c. [*or, havg made a will, dated, &c., & a codl thto, dated, &c., but such will & codl did not in any mner affect or relate to the sd hds & premes, &c.*]

Partial intestacy.

X. **WHAS** the sd A. died on, &c., leavg issue [havg had issue] by his sd marre 5 chln & no more, namely, B. & C., who attned their respive ages of 21 yrs on the — day of —, & the — day of — resply, D. now the wife of L., with whom she intermarried on, &c., E. who died on the — day of —, under the age of 21 yrs, namely, at the age of — yrs or thrabts & witht issue, *or*, “who died in early infancy,” & F., now an infant of the age of — yrs or thrabts.

State of family.

XI. **WHAS** the sd A. in the month of, &c., intermarried with B., of, &c. [at the parish church of—].

Marriage.

XII. **WHAS** the sd A. was on the — day of — adjudicated a bkpt [*where the bkcy was under the Act of 1849, under wch the bkpt's este vested in the official & credors' assnees jtly, say, “& B. was appted official assnee for such bkcy”*] by the Ct of Bkcy at —, & the sd C. & D. were on the — day of — chosen by the credors to be assnees of the este & effects of the sd A., & such choice was aftwds duly confirmed.

Bankruptcy under Act of 1849 or 1861.

XIII. **WHAS** the sd A. was adjudicated a bkpt by an order of the London Ct of Bkcy, dated, &c., upon a peton of bkcy

Bankruptcy under Act of 1869.

(c) As to the devolution of intestates' estates, see the Intestates' Estates Act, 1890, 53 & 54 Vict. c. 29, *Re Twigg*, [1892] 1 Ch. 579.

filed in such ct, & at a meetg of the credors on the — day of — the sd B. was duly appted tree of the ppty of the sd bkpt, & such appmt was duly certified by a certfe under the seal of the sd ct, dated, &c.

Bank-
ruptcy
under Act
of 1883.

XIV. WHAS by an order of the High Ct of Justice in Bkey or, the Coy Ct of — holden at — in Bkey], dated, &c., the sd, *bkpt*, was duly adjudicated a bkpt, & on the — day of — the sd, *tree*, was duly appted tree of the este & effects of the sd, *bkpt*, & on the — day of — 18— the sd appmt was duly certified by the Board of Trade.

Proceed-
ings in
insolvency
before the
Act of
1861.

XV. WHAS the sd A. on the — day of — took the benefit of the Acts then in force for the relief of insolvent debtors, & B. was appted the credors' assnee under such insolvency.

Liquidation
by arrange-
ment under
Act of
1869.

XVI. WHAS by special resolon passed at a genl meetg of the credors of the sd A., on the — day of — psuant to the Bkey Act, 1869, & wch resolon was aftwds duly registered, it was resolved that the affairs of the sd A. shd be liquidated by arrangemt, & not in bkey, & the sd B. was appted tree witht a committee of inspon, & such appmt was duly certified by a certfe of the Registrar of the London Bkey Ct [the Coy Ct of —]. dated, &c.

Voluntary
winding-up
of company
(a).

XVII. WHAS a special resolon requirg the sd Co to be wound up voluntarily was passed at a genl meetg of the Co, held on the — day of —, & confirmed at a subseqt genl meetg, held on the — day of —, & by a resolon passed at such last mentd meetg the sd A. & B. were duly appted liquidators of the sd Co.

The same.
Another
form (a).

XVIII. WHAS by an extraordinary resolon duly passed at a genl meetg of the Co, held on the — day of —, accdg to the requiremts of the Cos Act, 1862, it was resolved that it had been proved to the satisfon of the Co that it could not, by reason of its liabilities, continue its business, & that it was advisable to wind up the same, & the sd A. was duly appted sole liquidator of the Co.

Voluntary
winding-up
to be con-
tinued un-
der super-

XIX. WHAS by an order of the Chancery Divon made by the Vice-Chancellor [Mr. Justice] — on the — day of —, on the hearg of a peton in the mre of the Cos Acts, 1862 to

(a) See the Companies Act, 1862, ss. 129, 133.

1890, & of the — Co, it was ordered that the voluntary windg up of the sd Co be continued under the supervision of the Ct, & that such pedgs in the voluntary windg up might be adopted as the judge shd think fit.

vision of Court (b).

XX. WHAS by an order of, &c., *as in last form*, it was ordered that the sd Co shd be wound up by the Ct, under the provons of the Cos Acts, 1862 to 1890, & by an order of the sd Divon made by, &c., on the — day of —, the sd K. was duly appted official liquidator of the sd Co.

Compul-
sory wind-
ing-up and
appoint-
ment of
official
liquidator
(c).

XXI. WHAS by a decree of the High Ct of Chancery, made by the Vice-Chancellor Sir —, on the — day of —, in a cause whrin the sd A. was plt, & B. & others were defts (being a suit for the ppose of, &c.), an acct was directed to be taken, &c., & it was amongst other things ordered, &c.

Decree in
Chancery.

XXII. WHAS by the judgmt of the Vice-Chancellor [Mr. Justice] — in an action in the — Divon of the High Ct of Justice, whrin A. was plt & B. & others defts (being an action for the ppose of, &c.), it was amongst other things ordered, &c.

Judgment
of High
Court of
Justice.

XXIII. WHAS by an order of the High Ct of Chancery [Chancery Divon] made on, &c., by the Vice-Chancellor [Mr. Justice] —, upon a peton presented, *or*, “upon an applicon by summons in chambers,” in the sd cause & in the mre of, &c., by the sd A., it was ordered, &c.

Order on
petition or
summons.

XXIV. WHAS by the certfe of the Chief Clerk made in the sd cause, dated, &c., & filed, &c., it was certified, &c.

Chief
Clerk's
certificate.

XXV. WHAS these psnts have been [settled &] approved as a pper convce psuant to the sd order as appears by the signature of the chief clerk of the sd judge in the margin hrof.

Approval
of Judge.

XXVI. WHAS the sd hds have been considerably altered in regard to their subdivons & in other respts by the shiftg or removal of fences, ditches, or other boundary marks & the erection of a new mansion house & other bldgs since the date of the sd indre of, &c., in wch the ancient description thof is contd, & the same sevl hds accdg to their psnt subdivons,

Alteration
of parcels.

(b) See the Companies Act, 1862, ss. 147 *et seq.*

(c) See the Companies Act, 1862, s. 79 *et seq.*

quantities & abuttals, are delineated & desc'd in the map or plan herunto annexed & in the table of reference to the sd map or plan cont'd in the schedule hto.

INTRODUCTORY, &c.

Contract
for sale of
freeholds
and copy-
holds, ap-
plicable to
private
contract
or auction.

I. **WHAS** the sd A. has agr'd with the sd B. for the sale to him for the sum of £—— (a) of the hds hby grted, *or*, “hby assured,” in fee simple in posson, & also of the copyhd or customary hds hinafter covtd to be surrendered & the inhance thof in posson accdg to the custom of the manor of ——, free from incumbrces [except as hinafter mentd].

Contract
for sale of
leaseholds.

II. **WHAS** the sd A. has agr'd with the sd B. for the sale to him for the sum of £—— of the premes comprd in the hinbfe recited (b) indre of lease, for all the residue now to come of the term thby grted as afsd, subj't to the rent reserved by & the covts & condons cont'd in the sd lease.

Sale by
auction (c).

III. **WHAS** by the diren of the sd A., the hds hby assured, togr with other hds, were, on the —— day of —— put up for sale by public auction at, &c. [accdg to certn printed parlars of sale, of wch parlars lots —— & —— comprd the sd hds hby assured], & at such sale the sd B. was the highest bidder for & was decl'd the pchaser of the same for the sum of £——, *or*, “of lot —— for the sum of £——, & of lot —— for the sum of £——.”

Contract
for sale by
trustees.

IV. **WHAS** the sd A. & B., as trustees of the sd indre of, &c. [the sd will of the sd X.], & in exon of the sd power of [trust for] sale thrin cont'd, & with the consent (hby testified) of the sd C., have agr'd, &c., *as in form I. or II.*

Contract
for pur-
chase by

V. **WHAS** the sd A. & B., as trustees of an indre, &c., being a settlemt of certn estes situate, &c. [the will dated, &c., &

Variation
for sale for
a rent-
charge.

(a) In case of a rent-charge say: “In conson of the perpetual rent-chge hinafter reserved & limd & of the covts & provons hinafter cont'd, & on the pt of the sd B., his hrs, exs, ads, & assns, to be pformed & observed.”

(b) For several leases say, “sevl, *or*, ‘respive,’ hinbfe recited,” &c., and make similar alterations throughout.

(c) This form is for use where it is necessary to refer to the auction. The forms for general use are Nos. I. and II.

proved, &c., of X. deced], & in the exon of a trust or power in the sd indre [will] contd for the investmt of moys arisg thrunder in the pchase of real or leasehd estes have, with the consent (hby testified) of the sd C., as tenant for life in posson under the sd settlemnt [will], agrd with the sd D. for the pchase, &c.

trustees
(d).

VI. WHAS the sd A. & B., as trees of, &c., & in exon, &c., & with the consent of, &c., *as in form iv.*, have agrd to sell, & the sd C. & D., as trees, &c., *as in the last form*, have agrd to pchase, &c., *as in form I. or II.*

Contract
for sale
where both
parties are
trustees.

VII. WHAS the sd A., in exercise of the power conferred on him by the sd indre of mtge [& the statute in that behalf] has agrd with the sd C. for the sale, &c.

Contract
for sale by
mortgagee
under
power,
express or
statutory.

VIII. WHAS the sevl psons, pties hto of the first — pts, accdg to their sevl & respive shares, estes, intts, & powers, have resply agrd with the sd F. for the sale to him, for the sum of £——, of the entirety of the hds, &c.

Contract
for sale by
tenants in
common.

IX. WHAS the sd A., as such tenant for life as afsd, actg under the powers of the Settled Land Acts, 1882 to 1890 (e), has agrd, &c.

Contract
for sale
under the
Settled
Land Act.

X. WHAS the sd A., by virtue of the powers conferred on him by statute *or* “by the sd Act,” *or*, “the sd Act & the Acts incorpd thwith,” *or*, “the Act passed in the Session of Parliamt held in the — & — yrs of the reign of her Majesty, intituled, &c.,” *or*, “the Act — Vict. c. —,” *or*, “the — Act, 18—,” has agrd to sell & the sd B. & C. by virtue of the powers vested in them by, &c., have agrd to pchase, &c.

Contract
for sale
where both
parties
act under
statutory
authority

XI. WHAS by a contract, dated, &c., & made, &c., the sd A. agrd with the sd B., subjt to the sanction of the High Ct of Justice being obtained, for the sale to him, &c.: AND WHAS

Contract
for sale,
subject to
approval of

(d) If the settlement has been previously recited (which is not usually necessary), recite, “WHAS the sd A. & B. as the psent trees of the sd indre of settlemnt [will] & in psuance of the afsd power [trust] in that behalf, & at the reqt (hby testified) of the sd C., have agrd, &c.”

Variation
where
settlement
recited.

(e) If the sale includes the principal mansion-house or land occupied with it, and is made with the consent of the trustees, add here, “with the consent (hby testified) of the sd, *trees*” ; see the Act of 1890, s. 10.

Court, and order (a). by an order of the Chy Divon of the High Ct of Justice, made on the — day of —, in an action in wch — was plt, & — & others defts [in the mre of, &c.], the sd condonal contract was confirmed & ordered to be carried into effect, or, “the sd A. & his succors in title, was & were authorised to carry the same into effect.”

Order authorising sale of mansion-house, &c., under Settled Land Acts (b).

XII. WHAS by an order of the Chy Divon, made on, &c., the sd A. was authorised to sell, &c.

Contract for sale, and sub-contract.

XIII. WHAS the sd A. lately contracted with the sd B. for the sale to him, for the sum of £—, of the hds hby assured, but no convce thof has yet been exted to the sd B. : AND WHAS the sd B. has agrd with the sd C. to transfer to him the benefit of the sd contract upon the terms of the sd C. paying to him, the sd B., the sum of £—, makg with the sd sum of £—, agrd to be pd by the sd B. for the pchase of the premes as afsd, the sum of £—.

Part of purchase-money to remain on mortgage.

XIV. WHAS [upon the treaty for the sd pchase it was agrd that the sum of £—, pt of the sd pchase-moy, shd be secd to the sd A., with intt for the same at the rate of, &c., by a mtge of the sd pchased premes.

Agreement for payment of purchase-money by instalments.

XV. WHAS it has been agrd that the sd pchase-moy of £— shl be payable as follows, that is to say, £— upon the exon of these psnts, & the residue thof by four annl instalmts of £— each on the — day of —, &c., with intt on the ppal sum for the time being unpd at the rate of — p.c. p.a., to commce from the date of these psnts, & to be payable annlly with the instalmts of ppal.

Valuation of timber (c).

XVI. WHAS by the sd parlars of sale it was stipulated that all timber & other trees of the value of £— shd be taken by the pchaser at a valuon to be made as thrin mentd, & the timber & trees on the premes comprd in lot — have accdly been valued at £—.

Agreement for apportionment

XVII. WHAS upon the treaty for the sd pchase, it was agrd that the yrly sum of £— shd be the apportioned pt of the

(a) This may be used for a sale in an action, or of a mansion-house, or land occupied with it, under the Settled Land Acts, unless an order giving general authority to sell is obtained before the contract is entered into, as in the next form.

(b) See the rules under the Act of 1882, Form VI.

(c) The price of the timber would usually be added to the purchase-money without the need for this recital.

sd yrly rent of £—— payable in respt of the hds hby assured, but that the consent of the tenant to such apportionmt shd not be required.

of rent payable by tenant.

XVIII. WHAS the sd sum of £—— remains owing to the sd A. on the secy of the sd indre of, &c. [indres of mtge & further chge], but all intt thron has been pd up to the date of these pnts, *or*, “WHAS there is now owing to the sd A. on the secy of, &c., the ppal sum of £——, with the sum of £—— for intt thron, makg togr £——.”

State of mortgage debt.

XIX. WHAS it has been agrd that the sd sum of £——, *mtge debt & intt*, shl be pd to the sd B., *mtgee*, out of the sd pchase-moy, & that he shl join in these pnts in mner hinafter appearg [*or*, “that the sd pchase-moy shl be pd to the sd B. in pt dischge of the sd mtge debt so due to him as afsd”; *or*, “that the sum of £——, pt of the sd pchase-moy, shl be pd to the sd B. in pt dischge, &c.”; *or*, “the sd B. havg other sufft secy for the ppal moys & intt owing to him on the secy of the sd indre of mtge [indres of mtge & further chge] of, &c., it has been agrd that the whole of the sd pchase-moy shl be pd to the sd A., *mtgor*, & that the sd B. shl join, &c.”].

Agreement as to concurrence of mortgagee.

Various cases.

XX. WHAS the sum of £——, pt of the sd pchase-moy of £——, being the sum required at the current market rate to pchase the sum of £—— 2½ p.c. Consold Stk, has been pd by the sd, *pchaser*, to the sd, *mtgees*, & has been invested by them in the pchase of that sum in their names in satisfon of their sd mtge debt.

Payment in discharge of stock mortgage (d).

XXI. WHAS the sd B. has agrd to join in these pnts for the pposes & in mner hinafter appearg.

Agreement of party to concur.

XXII. WHAS the sd A. is desirous that the sd pchased premes shl be conveyed to the uses & in mner hinafter expd.

As to form of conveyance.

XXIII. WHAS it has been agrd that [the sd pchased premes shl be assured & limd in the mner, & subjt to the rts & restrons hinafter set forth, & that] these pnts shl contain the sevl covts & stipulons hinafter expd.

The same.

XXIV. WHAS the sd, *life tenant*, being desirous that the sd hds so agrd to be pchased by him as afsd shl be added to &

Purchase by tenant for life for benefit of trust estate.

(d) See National Debt (Conversion) Act, 1888, s. 21; *ante*, p. 71, note.

held with the hds comprd in the hinfie recited indre of settlemt, has agrd to pay the sum of £—— out of his own pper moys to make up the pchase-moy for the same witht reservg or havg any claim or demand for reimbursemt of such sun or any pt thof or any equity in his favour by reason of such paymt, & is desirous that the sd hds shl be conveyed to the uses & in mner hinafter appearg.

Apportionment of purchase-money between copyholds and other property for stamp duty (a).

Introductory to acknowledgment for production of deeds (b).

The same, for several sets of deeds.

XXV. WHAS for the ppose of the Act of Parliamt imposg ad valorem stamp duties upon convces on sale, it has been agrd that the sum of £——, pt of the sd pchase-moy, shl be the price or conson for the sd freehd [& leasehd] hds, & that the sum of £——, the residue thof, shl be the price or conson for the sd copyhd or customary hds.

XXVI. WHAS the sevl [deeds &] documts specified in the schdle hto, wch are in the posson of the sd A., relate as well to the hds hby assured [*or*, assured by the hinfie recited indre] as to other hds of the sd A., & it has been agrd that the sd A. shl retain the sd deeds & documts, & give such acknmt [& undertakg] in relon thto as is hinafter contd.

XXVII. WHAS the sevl [deeds &] documts specified in the sevl schdles hto relate as well to the hds hby assured [*or*, assured by the hinfie recited indre] as to other hds, & it has been agrd that the deeds & documts specified in the first schdle hto shl be retained by the sd A., that the deeds & documts specified in the second schdle hto shl be retained by the sd B. & C., & that the deeds & documts specified in the third schdle hto shl be retained by the sd D., & that such respive pties shl give such acknmnts [& (as regards the sd A. & D.) such undertakgs] in relon thto as are hinafter contd.

(a) See the Stamp Act, 1891, ss. 58, 61.

(b) See the Conv. Act, 1881, s. 9. This recital is now usually omitted.

CONSIDERATION—RECEIPT (c).

1. IN conson of the sum of £—— now (d) pd by the sd, *One vendor and one purchaser,* to the sd, *vendor,* [if the conrce be witht recitals add, *purchaser.*

(c) See Elph. Introd. 67, 84, Elph. Interp., Chapter XI. The Conv. Act, 1881 (s. 54), provides as to deeds executed after the commencement of the Act that the receipt for the consideration in the body of a deed shall be sufficient, without any further receipt being endorsed: and by s. 55, a receipt, whether in the body of the deed or endorsed, is to be sufficient evidence of the payment in favour of a subsequent purchaser or other person dealing for value without notice, although the consideration was not in fact paid. There is therefore now no object in endorsing a receipt, except where, as in the case of some companies or public bodies, it is the practice to endorse a receipt signed by some official or agent. *Receipt for consideration.*

The same Act, s. 56, provides that the production by a solicitor of a deed containing a receipt, in the body or endorsed, executed by the person entitled to give a receipt for the consideration, shall be a sufficient authority for the payment thereof to the solicitor, i.e., to the solicitor of the person to whom the money is expressed to be paid; *Day v. Woolwich, &c., Society*, 40 Ch. D. 491. As to the previous law, see *Viney v. Chaplin*, 4 Dr. 237; 2 De G. & J. 468; *Ex parte Swinbanks*, 11 Ch. D. 525. This will in ordinary cases save trouble by superseding the necessity for a special authority for such payment. Where the purchasers are trustees, they are protected in respect of the payment by the 66th section of the Act. *Payment to solicitor.*

It was decided that the enactment in s. 56 did not apply where the vendors were trustees, as it did not abrogate or alter the rule that trustees cannot in general authorize the payment of trust money to an agent; *Re Bellamy*, 24 Ch. D. 387; and it has also been decided (contrary to a dictum in *Webb v. Ledsam*, 1 K. & J. 385), that trustees cannot in general authorize payment to one of themselves (*Re Flower*, 27 Ch. D. 592); the result being that it was necessary that the trustees should all be personally present to receive the money, or that payment should be made to their joint account at a bank; but this, being very inconvenient in practice, has been altered by the Trustee Act, 1893, repealing, and by s. 17 re-enacting the Trustee Act, 1888 (51 & 52 Vict. c. 59), s. 2, which extended s. 56 of the Conv. Act, 1881, to trustees, although it does not empower them to delegate the receipt of the purchase-money to an agent except in that particular mode. The doctrine of *Re Bellamy* did not of course apply to mortgagees, nor doubtless to executors (who in this and other respects are not subject to the same strict rules as trustees); the new Acts, however, expressly extend to executors and administrators; see the Act of 1888, s. 1, and the Act of 1893, s. 50. It would seem from the principle of *Re Bellamy*, that payment to the solicitor would not be good under the Conv. Act, 1881, s. 56, where the conveyance is executed by the vendor by attorney, who has no power to appoint substitutes; *Re Hetling*, [1893] 3 Ch. 269. *Where vendors trustees.*

Where it is desired to exclude the statutory authority, a notice counter-

(d) Or, if preferred, "this day," or "upon or bfe the exon of these psnts."

"for the pchase of the fee simple in posson of the hds hby assured," or "for the pchase of the inhance in posson of the hds hby covted to be surrendered," or "for the pchase of the hds hby assnd,"] (the rect whof the sd, *vendor*, doth hby acknowe).

Several
vendors
and several
purchasers.

II. IN conson of the sum of £—— now pd by the sd, *pchasers*, to the sd, *vendors*, in the proportions & mner follg, namely, £—— to the sd A., &c. (a) (the rect whof [of wch respive sums] they, the sd, *vendors*, do resply hby acknowe).

Where
vendors are
a company
or corpora-
tion.

III. IN conson of the sum of £—— now pd by the sd, *pchaser*, to the sd, *Co or corporon*, or, "to the acct of the sd, *Co or corporon*, at the —— Bank" (the rect whof the sd, *Co or corporon*, do hby acknowe, or, "the rect whof is intd to be acknowed by a mem endorsed on these psnts signed by, *some officer or agent*, & the paymt whof the sd, *Co or corporon*, do hby also acknowe").

On sale by
mortgagor
and mort-
gagees,
part of
purchase-
money
being paid
to the
latter.

IV. IN conson of the sum of £—— now pd by the sd, *pchaser*, at the reqt of the sd, *mtgor*, in mner follg, namely, the sum of £——, pt thof, to the sd, *mtgees*, in full [pt] dis- chge of the moys owing to them under their sd mtge secy as afsd (the rect whof the sd, *mtgees*, do hby acknowe), & the sum of £——, the residue thof, to the sd, *mtgor* (the rect & paymt in mner afsd of wch respive sums, makg togr the sd pchase-moy of £——, the sd, *mtgor*, doth hby acknowe).

Release of
a debt
owing to
purchaser.

V. IN conson of the sum of £—— so owing by the sd, *vendor*, to the sd, *pchaser*, as afsd, from the paymt whof & from all

manding it should be sent to the solicitor of the purchaser or other party by whom the money is payable. The following is a form of express authority for payment to the solicitor:

Authority
by vendors
for pay-
ment of
purchase-
money or
deposit to
solicitors.

"To C. & D., *pchasers*.

Sale of ppty in ——.

We hby authorise & reqt you to pay to our solor, X., of, &c., the amt of the deposit [pchase-moy] payable by you to us on the exon of the agrmt for [complon of] the sale of the above-mentd ppty. Dated, &c.

Signed { A. }
 { B. } *vendors*."

(a) If the vendors are all absolute beneficial owners the purchase-money may be expressed to be paid to them jointly on their joint receipt without any apportionment; see Lewin, 476, 669.

claims & demands in respt whof the sd, *pchaser*, doth hby rele the sd, *vendor*, his hrs, exs & ads, & in conson of the further sum of £—— now pd by the sd, *pchaser*, to the sd, *vendor* (the rect of wch sum of £——, makg with the sd sum of £—— the sd pchase-moy of £——, the sd, *vendor*, doth hby acknowe).

VI. IN conson of the sum of £—— havg immedly bfe the exon of these psnts been applied by the sd, *pchaser*, in the pchase in the name of the sd, *vendor* [*mtgee*], of the sum of £—— 2½ p.c. Consold Stk (the pchase in mner afsd of wch sd sum of stk, the sd, *vendor* [*mtgee*], doth hby acknowe).

Transfer of
stock to
vendor or
mortgagee.

VII. IN conson of the sd sum of £—— havg been pd into Ct as hinbfe is recited (the paymt whof is hby acknowed).

Money paid
into Court.

VIII. IN conson of the rent-chge hinafter limd & secd to the sd, *vendor*, & of the covts by the sd, *pchaser*, hinafter contd.

Rent-
charge.

IX. IN conson of the respive paymts & mres hinbfe recited & of the premes [& of the covts by the sd, *pchaser*, hinafter contd, & for the other consons hrin appearg].

Considera-
tion appear-
ing from
recitals or
other parts
of deed.

PARCELS (b).

REAL ESTATE.

I. ALL THAT pce of land contg [by estimon, *or*, “admeasuremt,” *or*, “accdg to a recent admeasuremt”] —— acres, —— roods, & —— perches or thrabts, situate in the parish [township] of —— in the coy of ——, & bounded on or towards the north by land now or late of A., on or towards the south by the high road from —— to ——, on or towards the west, &c., AND ALSO all that other pce of land contg, &c., situate, &c., &

Land and
houses.

(b) See 1 Dav. Prec. p. 61 *et seq.*, 275 *et seq.*; Elph. Introd., 89, Elph. Interp., 153. See other forms under the heads, LEASES (HOUSES, &c.), LEASES (MINING), SETTLEMENTS (PERSONAL), and SETTLEMENTS (REAL).

bounded, &c., togr with the messe or tenemt & outbldgs erected or standg on the sd last-mentd pce of land, all wch premes were lately in the tenure or occupon of —, his undertenants or assns, & are now in the tenure or occupon of, &c. [*for copyhds add*, to wch premes the sd A. was admitted tenant out of ct, *or*, “at a ct held for the sd manor,” on the — day of — on the surrender of X., *or*, “as the hr of Y. deced”].

The same.
Another
form.

II. ALL THAT messe or tenemt, yard, garden, & outbldgs, & all those pces of meadow or pasture land adjoining thto & held thwith, situate, &c., & contg, &c., & now known as — [*boundaries as in form I. ; or referce to plan, see form XII., & tenancies*].

House in
town (a).

III. ALL THAT messe or tenemt with the yard, garden, coach-house, stables, offices & outbldgs thrunto belongg, situate & being No. — on the west side of — street, *or*, “known as, &c., situate in the — road,” in the parish of —, in the coy of —, & contg in width frontg, &c., — ft, & at the back or rear thof — ft, & in depth on the west side thof — ft, & on the east side thof — ft, be the same sevl dimensions little more or less, & abuttg towards the west, &c., &c. [*add referce if need be to plan, see form XII., the dimensions & abuttals being in that case given on the plan, & tenancies*].

Newly-
erected
houses.

IV. ALL THOSE pces or plots of land situate, &c. [& lately formg pt of certn fields or closes of land known as, &c.], & all those — messes or dwg-houses, shops, & outbldgs erected or now in course of eron on the sd respive pces or plots of land & known as or intd to be called Nos. —, —, & —, in — street [*add referce to plan if thought necy, see form XII.*].

Several
pieces of
land.

V. ALL THOSE pces of land & hds, situate, &c., contg in the whole, &c., or thrabts, & with the respive quantities & boundaries thof hinafter more parlarly mentd (that is to say), first a pce of land called, &c., contg, &c., & bounded, &c., secondly, &c., &c., be the sd respive quantities little more or less [or howsr orwise the sd respive lands & premes may be called, known or bounded], wch premes were formerly in

(a) As to the description where the vendor owns two buildings, one partly overhanging the other, see *Laybourn v. Gridley*, [1892] 2 Ch. 53.

the tenure or occupon of, &c., & are now in the occupon of —.

VI. ALL THAT messe or farm-house with the outbldgs & the Farm.
sevl closes or pces of land known as the — farm, situate in
the parish of — & coy of —, & comprisg in the whole
— acres, &c., or thrabts [*add parlars as in last form, or by
referce to schdle & plan, & tenancy*].

VII. ALL THAT pce of land situate, &c., the boundary line A small
whof startg from the north corner thof runs towards the irregular
south-east next the — road — ft, & then breaks north- piece of
eastward — ft, & from thence runs south-eastward — ft, land, with
& then returns towards the south-west — ft, & then runs measure-
towards the north-west in a curved line adjoining the pce of ments in
land next hinafter mentd — ft, & then towards the north- feet.
east back to the startg point next, &c., — ft., *add tenancy*.

VIII. ALL THOSE the manors or lordships or reputed manors Manors (b).
or lordships of, &c.

IX. ALL THAT mansion-house with the park, gardens, bldgs, Mansion-
lands, & hds occupied or held thwith, known as the — este, house and
contg, &c. [*referce to schdle & map, see form XII.*] estate.

X. ALL THAT land covered with water, situate, &c., called or Lake.
known as — lake, & estimated to comprise — acres, or
thrabts, now in the tenure or occupon of, &c.

XI. ALL THOSE pces of land, &c., &c., togr with half the bed Land
or soil of the river — where the same adjoins the sd respive adjoining
pces of land, & the rt of fishing in the sd river, & all rts river (c).
incident to the ownership of such half of the bed of the sd
river, & all such other rts in or over the sd river, & the bed,
soil, & water thof, as the sd, *vendor*, is entled to as owner of
the lands hby conveyed.

XII. ALL THAT, &c., situate, &c., wch premes are more Reference
parlarly descd in the schdle (d) hrunder written & [with the to schedule
and plan.

(b) See p. 264, note. Elph. Interp. 592.

(c) As to the presumption that half the bed of a river or half the soil of a Rivers and
highway passes under a grant of adjoining land, and how it may be rebutted, highways.
see *Micklethwait v. Newlay Bridge Co.*, 33 Ch. D. 133; *Duke of Devonshire v. Pattinson*, 20 Q. B. D. 263; *Pryor v. Petre*, [1894] 2 Ch. 11; Elph. Interp., 179 *et seq.*, and as to the effect of a gradual change of the bed see *Hindson v. Ashby*, [1896] 1 Ch. 78.

(d) The schedule of parcels may be divided into columns containing, 1, the numbers on the map; 2, the names by which the fields, &c., are commonly known; 3, the state of cultivation, &c.; 4, the acreage; and 5, the names of the tenants.

respective boundaries, *or*, "abuttals," thof] are for greater clearness delineated or shown on the map or plan (a) annexed hto, *or*, "drawn in the margin," *or*, "on the back of the — skin," of these psnts, & thrin coloured red, *or*, "thrin surrounded by a red verge line," [such schdle & map being resply taken from the ordnance survey map of the sd parish of —, & the book of referce to such survey (b)].

Reference
to deposited
plans and
books of
reference.

XIII. ALL WCH premes are delineated in the plan drawn in the margin of these psnts & thrin coloured red, & in the same plan & also in the deposited plans & books of referce of the sd railway for the sd parish of — are distinguished by the nos — resply.

Schedule
and plan
not to
control
description
in body of
deed (c).

XIV. ALL THOSE, &c., [*pcels with referce to schdle & plan*] wch schdle & plan are intd & shl be taken merely as assistg & explaing the description hinfce contd & not as in any way governg, controllg, restrictg or enlargg the same in the event of any variance or discrepancy betn the sd schdle or plan & the sd description, [and all other (if any) the messes,

As to use
of plan.

(a) As to the care requisite in the use of a plan, see 2 Dart, V. & P., 1093, 1094; *Micklethwait v. Newlay Bridge Co.*, 33 Ch. D. 133. The description should not be entirely dependent, as it sometimes is, on the colouring of the plan; to guard against this, the acreage or dimensions in square yards, or the lateral dimensions in feet (if a small property), should be given in the body of the deed or schedule, and not on the plan only. Colouring by a verge line makes it more difficult to tamper with the deed. If it is desired to guard against the plan controlling the description, form XIV., *infra*, may be used. There are perhaps few things in which more carelessness is to be met with in proportion to their importance than the preparation of plans; but the use of the Ordnance map minimises the risk of error. It would greatly simplify the examination and comparison of parcels in abstracts if the points of the compass were always marked on plans, with the North at the top.

As to
Ordnance
Survey.

(b) A discrepancy between the quantities in the muniments and the Ordnance Survey may arise from the acreage in the latter being always measured to the centre of the hedge, without regard to the ownership of the hedge and ditch. It was formerly common to refer to the map and book of reference of the tithe apportionment, but this, though most useful in its day, and still so as an aid in identifying parcels in investigating titles, is becoming superseded for this purpose by the Ordnance Survey; and the prospect of the latter becoming the basis of a general system of registration of titles (should such a system be hereafter established), is an additional reason for using it in conveyancing transactions. As to the use of the Ordnance map as evidence of boundaries see *Caton v. Hamilton*, 53 J. P. 504.

(c) Or the following may be used: "WCH premes by way of identificon, & not of limiton, are delineated, &c."

lands, tenements, or hds wch are comprd or descd in the sd schdle hto, but are not comprd in the description hinbfe contd].

XV. ALL THOSE, &c., *modern description*, wch premes were formerly pt & pcel of lands called, &c. [were formerly descd & conveyed by the description follg, namely, &c., *or*, “by the sevl names, & as in the tenure or occupon of the sevl psons, & as contg the sevl quantities mentd & set forth in the schdle, &c.”].

Lands, connecting modern with old description.

XVI. ALL & SINGR the — hds & premes by the hinbfe recited [within written] indre of, &c., grted or orwise assured.

Freeholds by reference.

XVII. ALL & SINGR the — hds & premes comprd in or demised by the hinbfe recited [within written] indre of lease of, &c. (d).

Leaseholds by reference to lease.

XVIII. ALL & SINGR the pces of land, mines, minls, powers, & privileges & all other the hds & premes comprd in & demised & grted respby by the hinbfe recited indre of, &c.

The same. Mining lease.

XIX. ALL SUCH, & so many, & such pts & pt of the sevl pces of land, messes, or tenements & hds hinafter descd, as are of freehd [copyhd] tenure (that is to say), all that, &c.

Where freeholds and copyholds intermixed.

XX. ALL THAT undivided moiety, or eql half pt or share, *or*, “eql undivided — pt or share” [& all other the share, este, & intt, if any, of him, the sd A.] of & in all those messes, &c.

Undivided share of realty.

XXI. ALL THAT the remr or reversion in fee simple of the sd A., expectant & to take effect in posson upon the dece & failure of issue of the body of the sd B., of & in all that eql undivided — pt or share of & in all that the one undivided moiety, &c., late of the sd testor X., deced, (being equivalent to one eql — pt of the entirety,) of & in all that, &c.

Reversion of undivided share of a share of realty.

XXII. ALL that fee farm rent or perpetual yrly rent-chge

Rent-charge.

(d) For a plan, say. “wch premes for greater clearness, & not so as to restrict or enlarge the description hinbfe contd, are delineated on the plan in the margin hrof, & thrin coloured, &c.” For several leases, say, “the respive hinbfe recited indres of lease of, &c.”

of £—— chged upon & issuing out of the pces or plots of land delineated in the plan drawn in the margin of these psnts & thron coloured, *or*, edged ——, & all future paymts of the sd rent-chge, togr with all powers & remedies for recovery of the sd rent-chge, & the full benefit of all covts, condons, & provons contd in the sd indre of, &c., for securg the same.

Coal mines
without
surface.

XXIII. ALL the mines, veins, or seams of coal & cannel in or under all those lands, &c., togr with the full rt & power of makg, sinkg, maintaing, & using all such pits, shafts, drifts, levels, drains, watercourses, & reservoirs, & of constructg, erectg, maintaing, & using all such spoil banks, railroads, tramroads, & other roads, bridges, culverts, bldgs, works, engines, machy, & convenices whatsr, & of doing all such things in, under, upon, through, or over the same lands or any pt thof as may be necy or convenient for searchg for, workg, gettg, dressg, preparg, carryg away & disposg of the same mines or seams, & the coal to be gotten thfrom, makg from time to time nevs to the sd, *vendor*, his hrs & assns, & his & their lessees & tenants, reasble compenson for all damage thby done or occasd to the sd lands, or any bldgs thron (a).

Fixed
machinery,
&c.

XXIV. TOGR with all machy, steam & other engines, mills, factories, workshops, sheds, bldgs, rlys, tramways, turn-tables, erons, fixtures, & works affixed or attached to the soil or freehd of the sd —— hds & premes hinfte assured.

Advowson.

XXV. ALL THAT the advowson, donation, & next & perpetual rt of presenton of & to the rectory [vicarage] of the parish church of ——, in the coy of ——, & the rts & appurts thto belongg.

Next pre-
sentation.

XXVI. ALL THAT the rt of presenton to the rectory [vicarage] of the parish church of ——, in the coy of ——, for the next avoidce of the same only.

Tithes.

XXVII. ALL & all mner of tithes of corn, grain, & hay, & all other tithes whatsr, both great & small, & pcels & portions thof, & all moduses & rent-chges in lieu or commuton of tithes issuing or payable out of or in respt of the lands & hds situate, &c., descd in the schdle hrunder written.

(a) See also the forms of reservations of minerals, pp. 386 *et seq.*

XXVIII. TOGR also with full rt & liberty for the sd, *pchaser*, his hrs [exs, ads,] & assns, the owners & occupiers of the sd messe & hds, &c., [in common with the sd A., his hrs & assns, & the owners & occupiers for the time being of the other houses situate, &c., or, "with all other psons who have or may hrafter have the like rt,"] at all times hrafter, by day or by night, & for all pposes, with or witht horses, carts, carriages, or waggons, laden or unladen, to go, pass, & repass, & to drive cattle, sheep, & other animals along, over, & upon the sd street or road, called, &c., or, "leadg from — to —," [delineated on the sd plan & thrin coloured red], [the sd, *pchaser*, his hrs [exs, ads,] & assns, from time to time payg his or their due proportion with such other owners or occupiers as afsd [accdg to the extent of his or their frontage] of the expse of maintaing the sd street or road & the fences adjoining the same in pper repair, until the same shl be adopted by the parish or local authority].

Right of way (b).

XXIX. TOGR also with the rt for the sd, *pchaser*, his hrs [exs, ads,] & assns, the owners & occupiers of the sd messe & hds, known as, &c., at all times hrafter, but on foot only [& betn — o'clock in the forenoon & — o'clock in the afternoon only], or, "& for all pposes connected with the use & occupon of the sd messe & hds or any messe hrafter erected on the site thof as a private residee, but not further or orwise, with or witht horses or other animals, carts, carriages, or waggons, laden or unladen," to go & return along & over the private road or way leadg from the sd messe & hds to — [marked — on the sd plan] [the sd *pchaser*, his hrs, &c., at his or their expse, keepg the sd road or way & the fences & gates thof at all times in good repair & condon].

The same, to a private dwelling-house only.

XXX. TOGR with full & free rt & liberty for the sd C., his hrs & assns, at all reasble times hrafter, to pass & repass, with or witht horses & carts, for the ppose of carryg timber & other wood & stone from the sd lands & premes hby assured over the other lands belongg to the sd, *rendor*, situate, &c., or as the case may be, but for no other ppose, doing thby no unnecy damage & makg compenson for all

The same, for special purpose.

(b) As to the effect of a grant of the "exclusive use" of a way, see *Reilly v. Booth*, 44 Ch. D. 12.

damage thby done or occasioned to such other land or the timber or other trees, underwood, or crops thron.

The same,
for water-
ing cattle.

xxxI. TOGR with full, &c., at all times hrafter to pass & re-pass with cattle & other animals from the lands hby assured along the roadway marked — on the sd plan to the river — for the ppose of waterg such cattle & other animals at the point marked — on such plan.

Right to
use roads
and drains
on building
estate.
Short form.

xxxII. TOGR with the rt at all times hrafter [in common, &c., *as in form xxviii., or* “in common as afsd,”] to use the sd roads or intd roads known as, &c., *or*, “all common roads made or to be made on the sd — este,” & all sewers, drains, & water-courses now or hrafter made or passg under or along any of the sd roads.

Rights of
light (a).

xxxIII. TOGR with the perpetual use of such windows as the sd B., his hrs or assns, shl at any time deem expedient to open in any bldgs to be erected on the sd land hby conveyed, in the front or west side of such bldgs, & the rt to the unimpeded access of light & air to all such windows.

Benefit of
cov nant of
indemnity
against
death
duties en-
tered into
by a previ-
ous vendor.

xxxIV. TOGR with the benefit of the covt of the sd X. contd in the sd indre, &c., for paymt of the duties [*or* succession duty] wch will become payable on the death of the sd Y., as hinbfe mentd, & the rt to be indemnified by the sd X., his hrs, exs, & ads in respt of the liability to such duty psuant to the sd covt.

Benefit of
restrictive
covenants
(b).

xxxV. TOGR with the benefit of the covts, restrons, & condons contd in the sd indre of, &c., restrictive of bldg on or user of the pces of land thby assured [with power in the name of the sd, *vendor*, but at the sole risk, cost, & expse of the sd, *pchaser*, his hrs & assns, to sue upon or enforce the pformce & observe of the sd covts, restrons, & condons, or any of them].

(a) It will be seen that this easement is more extensive than an easement of “ancient” lights, and might prove very onerous.

(b) As to the right of a purchaser of one of several plots laid out for building to the benefit of the restrictive covenants entered into by the purchasers of the other plots, see above, p. 286. That the benefit of restrictive covenants should be expressly conveyed, see *Renals v. Cowlishaw*, 9 Ch. D. 125, 11 Ch. D. 866; *Tucker v. Vowles*, [1893] 1 Ch. 195. As to meaning of “assns” of the vendor in a restrictive covenant, *Everett v. Remington*, [1892] 3 Ch. 148; *Haynes v. King*, [1893] 3 Ch. 440.

xxxvi. Or by whatsr other name or names, quantities (whether more or less), qualities, descriptions, or other parlars, the sd sevl manors, advowson, capital & other messes, farms, lands, cottages, rents, tithes, hds, & premes hinbfe in the 1st, 2nd, & 3rd pts of this schdle descd, or any of them, or any pt or pts thof respky are, or is, or has been at any time htofore called, known, tenanted, distinguished, or descd, & notwg any mistake, omission, or misrecital of the numbers, referces, quantities, qualities, acreages, tenants' names, or other parlars or description hinbfe contd.

Clause providing against errors in description in schedule.

PERSONAL ESTATE.

I. ALL THAT poly of assurse on the life of the sd A., effected in the — Assurse Socy, in the name of the sd A., dated, &c., nod., &c., for the sum of £——, & under the annl prem of £——, & the sd sum of £—— assured thby, & all bonuses, addons, & moys to become payable under the sd poly, & the full benefit thof.

Policy of assurance.

II. ALL THOSE sevl pols of assurse on the lives of the sd K. & L. respky, the parlars whof, showg the offices in wch & the psons in whose names the same respky were effected, & the sums assured thby, & the dates & nos thof, & prems payable in respt of the same, are contd in the schdle hto, & all moys assured by or to become payable under such respive pols.

Several policies described in schedule (c).

III. ALL THAT the hinbfe recited bond, or, "ALL THAT bond dated, &c., under the hand & seal of the sd A., whby the sd A. became bound to the sd B. in the penal sum of £—— conditioned for the paymt, &c.," & the ppal moy & intt now due & henceforth to become due for the same, & the full benefit & advantage thof.

Bond debt.

IV. ALL THE este & intt of him the sd, *vendor*, under the hinbfe recited indre of settlemt [will] durg his life in the stks, funds, & secs or "ppty" specified in the schdle hto, or wch may hrafter represent or be substituted for the same, or any pt thof, & in the intt, divds, & annl produce thof respky.

Life interest in personalty.

V. ALL THAT the share, este, & intt of him the sd, *vendor*, under the hinbfe recited indre of settlemt [will] expectant &

Reversionary interest in personalty.

(c) The policies may be conveniently described in a schedule arranged in columns, giving the particulars here indicated.

to take effect in posson on the death of the sd K. [or the default or failure of issue of the sd K. by L. his wife as afsd, wch shl last happen], of & in the stks, funds, & secs, &c., as in last form.

Share of
residue.

VI. ALL THAT the one eql — pt or share [& all other (if any) the pt or share], to wch the sd, *vendor*, is entled under the sd will & codls of the sd K. as hinfte is recited, of & in the residuary real & psonal este of the sd K., or the moys to arise from the sale, conversion, & gettg in of the same, & the intt, divds, rents, & income thof, subjt to & after paymt of the funl & testy expses & debts of the sd testor, & the legies bequed by his sd will & codls, & the duty on any legies bequed free of duty.

Goodwill,
machinery,
stock-in-
trade, book
debts, &c.

VII. ALL THAT the goodwill or intt of him, the sd A., of & in the business of — [carried on by him at —], & also all the machy, utensils, plant, furniture, materials for manufacture, manufactured goods, chattels, & effects belonging to or used in his sd business, & the book debts the parlars whof are entd in the books of acct of the sd business, & the benefit of all existg contracts & orders for the supply of articles & things manufactured by him in his sd business.

RESERVATIONS AND EXCEPTIONS (a).

Exception
or reserva-
tion.

I. ALL THOSE, &c., *pcels*, SAVE & except out of the assurse hby made, or, "this psnt assurse," All, &c., or, "EXCEPT & reservg unto the sd, *vendor*, his [apptees] hrs [exs, ads] & assns, &c.," [AND ALSO by way of assurse, & not of exception or reservon, all, &c.].

Reserva-
tion of
minerals,
with rights
of surface
working
(b).

II. EXCEPT & reservg unto the sd, *vendor*, his hrs & assns, all [coal, iron-stone, & other] mines & minls in or under the lands hby assured, with full liberty & power at all times to

(a) As to the creation of easements and other rights reserved to the vendor by way of limitation of the use, see the Conv. Act, 1881, s. 62. A deed containing a reservation should be executed by the grantee; *Wickham v. Hawker*, 7 M. & W. 63, 76.

(b) As to the right of a surface owner to support, and to compensation for

enter upon the sd lands or any pt thof, to search for, dig, raise, make merchantable, & carry away the sd [coal, iron-stone, & other] mines & minls [witht leavg any support for the surface of the sd lands], & with full liberty & power to make, sink, maintain, & use all such pits, shafts, levels, drains, water-courses, & reservoirs, & to construct, erect, maintain, & use all such spoil-banks, railroads, tramroads, & other roads, bridges, bldgs, works, engines, machy, & conveniences whatsr, & to do all such things in, under, upon, through, or over the sd lands, or any pt thof, as may be necy or convenient for all or any of the pposes afsd, makg from time to time nevs to the sd, *pchaser*, his hrs & assns, & his & their lessees & tenants, reasble & adequate compenson for all damage thby done or occasd to the sd lands, or any bldgs thron [other than any damage occasd by the subsidce of the sd lands].

III. EXCEPT & reservg unto the sd, *vendor*, his hrs & assns, all mines & minls in & under the sd lands hby assured, with full power & authority to work & get the same mines & minls, but by underground workgs only, & witht enterg upon or in any mner affectg or exercisg any rts or powers whatsr in or over the surface of the sd lands, & makg, *compenson*, *see last form*; [or, & so that the sd, *vendor*, his hrs, exs, ads or assns, shl not be liable or responsible for any depression, subsidce, damage, or injury whatsr wch may be occasd to the surface of the sd land, or to any bldg, erection, machy, or thing for the time being upon the sd land by the workg & gettg by the sd, *vendor*, his hrs, exs, ads, or assns, or his or their lessees of

The same, with right of underground working only.

Variation, if no compensation for injury to surface.

subsidence or other damage to the surface, where there is a reservation of minerals, see Stephen on Support, *Aspden v. Seddon*, 1 Ex. D. 496; *Dixon v. White*, 8 App. Cas. 833; *Bell v. Love*, 10 Q. B. D. 547, 9 App. Cas. 286; *Consett Waterworks Co. v. Ritson*, 22 Q. B. D. 318, reversed on appeal, *ib.* 702; *Bell v. Dudley (Earl)*, [1895] 1 Ch. 183. As to compensation for successive subsidences arising from the same act, see *Darley Main Colliery Co. v. Mitchell*, 11 App. Cas. 127. As to what is comprised in the word "minerals," see Elph. Interp. 603; *Midland Rail. Co. v. Checkley*, 4 Eq. 19, 25; *Midland Rail. Co. v. Haunchwood, &c. Co.*, 20 Ch. D. 552; *Midland Rail. Co. v. Robinson*, 37 Ch. D. 386, 15 App. Cas. 19; *Earl of Jersey v. Guardians of Neath, &c.*, 22 Q. B. D. 555. As to the difference between an exception and a reservation (not exclusive) and between a licence and a *profit à prendre*, see *Sutherland v. Heathcote*, [1891] 3 Ch. 504, [1892] 1 Ch. 475; Elph. Introd. 96; Goodeve R. P. 330.

As to exceptions and reservations of minerals.

any mines or minls in or under the sd land or any pt thof, or any adjoining land].

The same.
Full form.

IV. EXCEPT & reservg out of the assurce hby made, all mines & minls, whether already opened & in workg or not, in or under the lands hby assured, & every pt thof, & in or under all roads or ways intersectg the sd lands, or any pt thof, & in or under all roads or ways boundg the same lands, to the centre of such roads or ways (other than clay, marl, gravel, & sand, wch can be gotten wtht going under or passg through any seam or vein of coal or ironstone), & wch mines & minls (other than & excludg such clay, marl, gravel, & sand as afsd) are hinafter refd to as the excepted mines & minls: with full power for the sd, *vendor*, his hrs & assns, & his & their lessees, agents, servants, & workmen, to search for, get, take, & carry away, & have & take the rents & profits of the excepted mines & minls; & to sink any pits or shafts, & excavate & drive any underground levels, pits, passages, adits, & headways, & to make & lay down any rlys, tramways, or other ways or roads, above or underground, & to make & lay down any sidings, tramways, or other communicons with or to the — Rly, & to erect & build any offices, bldgs, engines, pumps, machy, works, or convences, & to place, stack, & lay up any coal, cannel, or other minls, earth, & rubbish raised or to be raised out of any of the sd mines upon such pt of the sd lands as is coloured — on the sd map or plan, for the ppose of gettg & workg the excepted mines & minls [& any mines or minls in or under the other lands belonging to the sd, *vendor*, wch are coloured — on the sd map or plan]; & also to make & use for the ppose of the carriage, sale, & delivery, not only of the excepted mines & minls [& of all mines & minls in or under the other lands afsd], but also of all materials, articles, & things wch the sd, *vendor*, his hrs or assns, or his or their lessees, agents, servants, & workmen, may desire to carry or convey to or from any collieries or works for the time being existg on any of the lands coloured — in the sd map or plan, & for any ppose connected with the use & enjoymt of the sd respive collieries & works, mines & minls, a tramway from the point marked A to the point marked B on the same map or plan on the line marked — thron, but subj't nevs to the rt of the sd, *pchaser*, his hrs &

assns, to make & use any rail or tramways or other roads or ways over, across, or under the sd tramway, but so as not unnecessarily to obstruct or impede the use & workg thof: Provd nevs that no surface rts shl be exercisable under or by virtue of the afsd exceptions & reservons, except in & upon the sd lands coloured — on the sd map or plan, & that the sd, *vendör*, his hrs & assns (hinafter called the mine owners), shl from time to time on demand, make all due compenson to the sd, *pchaser*, his hrs & assns (hinafter called the surface owners), & the occupiers for the time being of such lands for all such injury or damage as may be done to any bldgs on the sd lands hby assured, or wch may be erected thron for agricultural pposes, arisg from any act or neglect in workg or gettg the excepted mines & minls [or the mines or minls in or under the other lands afsd], or in the exercise of any of the powers or authorities hby excepted or reserved; & that the mine owners shl also previous to using any of the lands wch they are hby authorised to use, remove the turf & surface soil from the pt of the land about to be used by them, & lay up the same in heaps in some convenient pt of the land; & shl also from time to time fence off with good & substantial posts & rails such pts of the lands wch they are hby authorised to use as they may dig into, occupy, or use by virtue of any of the exceptions or reservons hbin contd, & at all times hrafter keep & preserve such fences in good & substantial repair; & shl also pay to the surface owners for every acre of the lands wch the mine owners shl from time to time enter upon, use, or occupy by virtue of any of the sd exceptions or reservons, the yrly rent of £——, & so in proportion for any greater or less quantity than an acre, by 4 eql qtrly paymts, on the —— day of ——, &c., clear of all dedons, except ppty tax, the first paymt of such rent, or an apportioned pt thof, to be made on such of the sd qtrly rent days as shl happen next after any such lands shl be entd upon, used, or occupied, & the sd rent shl continue payable until the land shl be levelled & [the turf & surface soil replaced] restored fit for agricultural pposes, & the posson thof delivered up to the surface owners, & shl be recoverable by distress as rent reserved on common demises; & that the mine owners shl also pay all rates & taxes for the time being payable, except ppty tax, in respt of

the land so entd upon, used, or occupied, & shl also on demand from time to time pay the surface owners or the occupiers or tenants for the time being of the sd lands, reasble compenson for any damage occasd to any grass, corn, or other crops growg upon the sd lands at the time of entry thron; & that all questions of compenson shl in case of disagrmt be settled by two arbitrors or their umpire; & that these stipulons, so far as they purport to affect the sd, *vendor*, shl bind him & his hrs, exs, & ads, & shl also bind the excepted mines & minls, & the owners thof for the time being.

Reserva-
tion of
right of
way (a).

v. EXCEPT & reservg unto the sd, *vendor*, his hrs [exs, ads,] & assns, full & free rt & liberty at all times hrafter, &c. See pp. 383—384, forms XXVIII.—XXXII.

Reserva-
tion of
right to
take water
from reser-
voir.

vi. EXCEPT & reservg unto the sd, *vendor*, his hrs & assns, the sole & exclusive rt & liberty at all times hrafter of using the water from the reservoir distinguished in the sd plan by a blue colour, for supplying water to the messe & bldgs called —, now in the occupon of the sd, *vendor*, or any messe or bldgs wch may hrafter be erected on the site thof, in as full & ample a mner as htofore, but for domestic, stable, or horticultural pposes only: AND also the free & uninterrupted flow & passage at all times hrafter of the water from the sd reservoir for such pposes through the pipes & tanks now used for conveyg the same under the lands hby assured, along the lines distinguished by a red colour & the letters E E on the sd plan, & through any pipes & tanks wch may from time to time be substituted for the same: AND also liberty from time to time, with workmen & others, to enter upon the sd lands, & to repair (b), renew, cleanse, & maintain the sd reservoir, pipes, & tanks, the sd, *vendor*, his hrs & assns, givg to the sd, *pchaser*, his hrs & assns, & his & their tenants, reasble notice previous to such entry, & doing thby no unnecy damage to the surface of the sd lands, or the timber, trees, underwood, or crops thron, & makg full compenson for all damage done or

(a) As to implied reservations of necessary easements, see *Wheelton v. Burrows*, 12 Ch. D. 49; *Taws v. Knowles*, [1891] 2 Q. B. 564; Elph. Interp. 200.

(b) As to the erection of buildings interfering with the repair of the pipes, see *Goodhart v. Hyett*, 25 Ch. D. 182.

occasid to the surface of such lands, or the timber, &c., by the exercise of such liberties as aforesaid.

VII. EXCEPT & ALWAYS RESERVE unto the sd A., his hrs & assns, the full & free rt & liberty at all times hereafter to work the quarry situate in the sd lands hereby assured at the point marked — in the sd plan, & to take & carry away the stone thence over the sd lands hereby assured for the purpose of, &c., but for no other purpose, doing no unnecessary damage, &c., & making compensation, &c., *as in last form*, & so news that the sd B., his hrs or assns, shall not by the reservation hereinbefore contained be in any way precluded from working the sd quarry & taking the stone thence to such extent as he or they may think fit.

Reservation (non-exclusive) of right to work a quarry.

GENERAL WORDS (c). ESTATE CLAUSE (d).

I. TOGETHER with all bldgs (e), erections, fixtures, hedges, ditches, fences, ways, passages, waters, drains, water-courses, woods, Lands.

(c) General words were before the Conv. Act, 1881, usually inserted in conveyances of land immediately after the parcels (and before the reservations if any), but are now universally omitted, as they are supplied by section 6 of that Act, which provides that a conveyance of land, or of land with buildings thereon, or of a manor, shall imply the usual general words intended to pass the easements or other rights and appurtenances belonging thereto, unless a contrary intention is expressed or indicated. In *Beddington v. Atlee*, 35 Ch. D. 317, 331, the question was raised but not decided, whether express general words less extensive than those in the Act show such a contrary intention.

Omission of general words.

The clause in the Act applies to a conveyance of copyholds by surrender, as the definition of "conveyance" in s. 2 does not exclude conveyances not by deed. The clause does not, except in the case of a manor, mention

As to copyholds.

(d) The "the all estate" clause (see Elph. Interp. 204), which formerly followed the "general words," is now implied by the Conv. Act, 1881, s. 63, in all conveyances, including appointments, unless a contrary intention is expressed or is to be gathered from the terms of the instrument, so that it is universally omitted. That such a clause may be controlled by a recital, see *Ex parte Dawes, In re Moon*, 17 Q. B. D. 275. A short form of general words and estate clause is given in the text, as it may be of use in conveyances of land in the colonies.

Omission of "the all estate" clause.

(e) For a house in a town add after "buildings," "outhouses, fixtures, cellars, areas, ways, passages, lights, sewers, gutters, drains, rights, &c.," *as in the text*.

House in town.

underwoods, commons, [mines, minls (a),] rights, easemts, & appurts whatsr, to the sd hds & premes or any of them, or any pt thof belonging, or with the same now or htofore held, used, occupied, or enjoyed, or reputed or known as pt or pcel thof, or appurtenant thto.

Estate
clause.

II. AND ALL the este, intt, rt, title, claim, & demand of the sd, *vendor* [of the sd, *conveying pties*, resp], in, to, or upon the sd premes, or any pt thof; *if the conveyance is made under a statutory power, add* "or wch he [they or any of them] can by statute or orwise convey."

Minerals.

"mines and minerals," which were often included in the general words, though improperly, as they are not appurtenances, but form part of the land, and (except in the case of copyholds, and of conveyances to railway companies, from which latter they are excepted, unless expressly mentioned, by 8 & 9 Vict. c. 20, s. 77) would pass with it unless expressly excepted; in a mineral district they should be specially mentioned. As to what passes with a "manor," see the references above, p. 264, note. The statutory as well as the ordinary clause specifies "fixtures;" but this is immaterial, as a conveyance of land of any tenure would carry all fixtures belonging to the vendor without express mention, including trade or other tenant's fixtures, i.e., such as would be removable as between landlord and tenant; see 2 Dav. Prec. Pt. 2, p. 177, *et seq.*; see also note on Bills of Sale, *post*, Vol. II. If any fixtures are not intended to pass they must be excepted.

Easements
over ad-
joining
property
of vendor.

The statutory general words have reference only to easements, &c., existing "at the time of the conveyance," and omit the words, "or heretofore," which were usually inserted (as in the form in the text), as to the meaning of which see Elph. Interp. 194. When such a *quasi* easement is known to exist, it should be expressly granted or excluded. The following is a form of exclusion intended to follow the parcels:—

Conveyance
not to
include
easements
over ad-
joining
property
of vendor.

"BUT this assurre shl not include or operate as a grt or assurre of any ways, water-courses, or other rts or easemts whatsr over any adjoining land or ppty of the sd, *vendor*, wch appertain to or are reputed to appertain to or have htofore been held or enjoyed with the sd premes hby assured or any pt thof."

As to the implication of easements where there has previously been unity of ownership, see Elph. Interp. pp. 189, *et seq.*; *Birmingham, &c., Co. v. Ross*, 38 Ch. D. 295; *Hood & Challis, Conv. Acts*, 28.

(a) The words "mines and minerals" apply to freeholds only.

HABENDUM (b).

I. To HOLD all the hds & premes hby assured UNTO the sd, *pchaser, or grtee to uses*, his [*pchasers, or grtees to uses, their*] hrs & assns (c), [subjt to, &c., *state or refer to the tenancies or any incumbces & liabilities subjt to wch the ppty is conveyed, see below (d)*] To THE USE of the sd, *pchaser*, his [*pchasers, their*]

For freeholds.

hrs & assns for ever [*if tenants in common, say, "To THE USE of the sd, pchasers, & their respive hrs & assns, as tenants in common, in eql shares," or, "in the shares follg, that is to say, as to one moiety thof to the use of the sd —, his hrs & assns, as to one eql fourth pt thof to the use of the sd, &c."*].

II. To HOLD UNTO & TO THE USE of the sd, *pchaser*, his hrs & assns, *or, "in fee simple" (e)*, [subjt, &c., *to tenancies or incumbces*].

Short form.

III. To HOLD, &c., subjt to a lease dated, &c., whby the premes were demised to K., for the term of — yrs from the — day of —, at the yrly rent of £—, *or, "to the*

Subject to tenancies.

(b) As to the use of the "habendum," see 1 Dav. Prec. 79, *et seq.*; Elph. Introd. 97, 247; Elph. Interp. 210, *et seq.*

(c) An estate in fee simple may now, by the Conv. Act, 1881, s. 51, if the draftsman prefers it, be limited by the words "in fee simple," without the word "heirs;" but the old form is here retained. It is not clear that if the grantor has only a base or other determinable fee, it would pass by a grant "in fee simple" under the Act, as it would if the word "heirs" were used; but this is not a contingency which need usually be taken into account. The enactment does not render the words "in fee simple" appropriate in a conveyance to a company or other corporation aggregate, but they are often in practice used in such a case, and though unnecessary seem free from objection; but a conveyance to a corporation *sole*, with the words "in fee simple," but without the word "successors," confers the fee on the individual instead of on the corporation. As to conveyances to corporations, see Challis, R. P. 197. It should be remembered that as an equitable limitation by way of trust executed, has the same construction as a legal limitation (Elph. Interp. 276; *Re Whiston*, [1894] 1 Ch. 661); the words "hrs" or "fee simple" must be used where it is intended to confer an equitable fee.

Limitation of estate in fee simple.

(d) According to the more technically correct practice, which should be adhered to in a conveyance to uses, the incumbrances, &c., subject to which the conveyance is made are stated, as in the above form before the declaration of uses; but in a simple conveyance in fee, in which the declaration of the use is in fact usually mere surplusage, the short form No. II is preferable.

Reference to incumbrances, &c., in habendum.

(e) See note (c), above; and the forms in the fourth schedule to the Conv. Act, 1881, which have a statutory sufficiency by virtue of s. 57.

leases & tenancies hinfte, *or*, 'in the schdle hto' mentd," *or*,
 "to the subsistg leases & tenancies."

The same.
 Where the
 rent pay-
 able by the
 tenant and
 also the
 tithe rent
 is appor-
 tioned (a).

IV. To HOLD, &c., subjt to a lease dated, &c., whby the
 premes (togr with other lands & hds) were demised, &c., at
 the yrly rent of £——, of wch the yrly rent of £—— shl be
 the apportioned pt to be henceforth payable in respt of the
 premes hby assured, & with the benefit of such apportioned
 rent, & all powers & remedies for the recovery thof, & of the
 covts by the lessee, & condons contd in the sd lease, so far
 as the same relate to the premes hby assured, AND SUBJT to
 the paymt of a yrly sum of £——, or the equivalent thof for
 the time being under the provons of the Acts for the com-
 muton of tithes, as an apportioned pt of the yrly sum mentd
 in the apportionmt of the tithe rent-chge for the sd parish
 of——, as payable in respt of an inclosure of wch the premes
 hby assured form pt.

Subject to
 mortgage,
 rent-
 charge, or
 death
 duties.

V. To HOLD, &c., subjt to the hinfte recited indre of mtge,
 & the ppal sum of £—— now owing on the secy thof, & the
 intt due & to become due on such sum from the —— day of
 —— last, *or*, "to the paymt of the sd anny or rent-chge of
 £—— from the —— day of —— last," *or*, "subjt to the
 duties [succession duty] to become payable on the death of
 the sd X. in respt of the premes."

Subject to
 obligations
 and re-
 strictive
 covenants.

VI. To HOLD, &c., subjt to the obligons & restrons hinafter
 expd & imposed on the sd, *pchaser*, his hrs & assns.

Subject to
 reserva-
 tions and
 restrictions
 in a former
 convey-
 ance (b).

VII. To HOLD, &c., subjt to such exceptions & reservons of
 the —— & other mines & minls in & under the sd lands &
 premes, & rts of workg & gettg the same, & orwise in relon
 thto, & to such rts of way & water, & other easemts & rts, as
 were by the hinfte recited indre of, &c., excepted or reserved
 to or in favour of the sd X., his hrs & assns, or orwise:
 But with the benefit (c) of the provons in the sd indre contd

Apportion-
 ment of
 rent.

(a) That a covenant to pay rent is divisible on an assignment of the
 reversion of part of the demised premises, see *Mayor of Swansea v. Thomas*,
 10 Q. B. D. 48. As to the effect of the surrender of part of the premises
 by the assignee, see *Baynton v. Morgan*, 22 Q. B. D. 74.

Restrictive
 covenants.

(b) As to the right of the vendor to insert in the conveyance such a
 reference to restrictive covenants or obligations to which the property is, or
 is alleged to be, subject, see *Re Monckton*, 27 Ch. D. 555; *Hardman v. Child*,
 28 Ch. D. 712.

(c) In general everything which is intended to pass by the conveyance
 should precede the habendum; See *Elph. Interp.* 212.

for compensatg the sd, *vendor*, his hrs & assns, in respt of land taken or occupied for the ppose of, or damage done in workg or gettg the sd mines & minls, or the exercise of the powers & liberties thby given to the sd X., his hrs & assns: AND subjt also to the covts by the sd, *vendor*, & provons in the same indre contd, restrictive of the rt of bldg on, or user of the sd lands & premes or orwise, To THE USE, &c.

VIII. To HOLD, &c., UNTO the sd, *pchaser*, his hrs & assns, dischgd from all ppal moys & intt intd to be seed by, & from all claims & demands under the hinbfe recited indre of, &c. [but subjt, to *leases*, &c.], To THE USE, &c. Free from a specified incumbrance.

IX. To HOLD the same UNTO the sd, *grantee or grantees to uses*, & his [their] hrs [subjt, &c.] To THE USES, upon the trusts, & subjt to the powers & provons hinafter limd, decld, & expd of & concerng the same. Freeholds to uses afterwards declared.

X. To HOLD the same UNTO the sd, *trusts or grantees*, & their hrs [subjt, &c.] To THE USES, upon the trusts, & subjt to the powers, chges, & provons to, upon, & subjt to wch, under or by virtue of the sd indre of settlemt of, &c., or, "the sd will & codls of the sd X.," or the exercise of any power of chging thrin contd, the freehd hds [in the coy of —] comprd in & remaing subjt to the sd indre of settlemt [will] (e) now stand limd & settled, or as near thto as the circes of the case may permit, but not so as to increase or multiply chges or powers of chging. Freeholds to uses of settlement or will. Variation for disentail and re-settlement (d).

XI. To THE USES, upon the trusts, & subjt to the powers & provons to, upon, & subjt to wch the same premes ought to be held by reason of the same havg been pchased with capital moys arisg under the hinbfe recited settlemt [will] as afsd. The same. Another form.

XII. To HOLD, UNTO & TO THE USE of the sd, *trusts*, their hrs & assns [subjt, &c.] UPON THE TRUSTS, & subjt to the powers & Freeholds upon trusts.

(d) This form is generally suitable. See also observations and proposed form in Lewin on Trusts, p. 559.

(e) If there has been a disentail and re-settlement, and any of the estates or charges, &c., under the original settlement are still in force, say, "under or by virtue of the sd, *origl settlemt*, & the sd, *disentailg assurse*, & the sd, *resettlemt*, or the exercise of any power of chging in the sd respive indres contd, the freehd hds comprd in & remaing subjt to the sd, *origl settlemt*, now, &c." Variation.

provons hinafter decl'd & exp'd of & concerng the same, *or*, "upon the trusts, &c." *as in last form*, *or*, "upon the trusts & subj't to the powers & provons upon & subj't to wch the same premes ought to be held by virtue of the sd indre of settlem't of, &c. [the sd will & codls of the sd X]."

Freeholds
to lessee
where
there is a
sub-lease
(a).

XIII. To HOLD the same unto the sd, *pchaser*, & his hrs subj't to the sd term of — yrs created by the sd lease of, &c., & to the intent that the sd term may be henceforth absolutely merged in & consold with the revon & inhance in fee simple of the sd hds & premes expectant on the determon of the same term, but not so as to prejudice or affect the sd underlease of, &c., & so that the benefit of the rent reserved by & the covts on the pt of the lessee & condons cont'd in the sd underlease, shl henceforth be & remain incident & annexed to the freehd of the same premes To THE USE of the sd, *pchaser*, his hrs & assns.

Leaseholds.

XIV. To HOLD the same UNTO the sd, *pchaser*, his exs, ads, & assns, henceforth for all the residue now unexpired of the sd term of — yrs (b), grted by the sd indre of lease, subj't henceforth, *or*, "as from the — day of —," to the paymt of the rent & the pformce & observe of the covts on the pt of the lessee & condons by & in the same indre reserved & cont'd [& subj't to an underlease of, &c., *or*, "to the subsistg underleases or tenancies of the sd respive hds & premes "] (c).

(a) See 8 & 9 Vict. c. 106, s. 9; Conv. Act, 1881, s. 10.

(b) For several leases say, "respive terms of — & — yrs," "respive indres," &c.

Variation
for assign-
ment of
part of
premises
held under
the lease
subject to
appor-
tioned
rent.

(c) If the sale is of part only of the property in the lease, the rent having been apportioned on a former occasion, say:—

"SUBJT to the yrly rent of £—, being the apportioned pt payable in respt of the premes hby assned of the entire rent of £—, reserved by the sd lease as hinfte is recited, & to the pformce & observe of the covts on the pt of the lessee & condons cont'd in the sd lease so far as the same relate to the premes hby assned, & subj't to such liability as is subsistg under the sd lease or orwise to the paymt of the remaing portion of the sd entire rent & to the pformce & observe of the sd covts in respt of the remaing portion of the premes comprd in the sd lease, but with the benefit of

xv. To HOLD all such pts of the sd hds & premes as are of freehd tenure UNTO & TO THE USE of the sd, *pchaser*, his hrs & assns [subjt, &c.], & To HOLD all such pts of the sd hds & premes as are of leasehd tenure UNTO the sd, *pchaser*, his exs, ads, & assns, henceforth for all, &c., *as in last form.*

Freeholds
and lease-
holds com-
bined.

xvi. To HOLD the same UNTO the sd, *trees*, their exs, ads, & assns, &c., *as in form xiv.*, upon the trusts, &c., *as in form x.*, or, "upon such trusts, & subjt to such powers & provons as shl correspond with the uses, trusts, powers & provons to, upon, with, & subjt to wch under, &c.," *as in form x.*, or, "upon the trusts of the sd settlemt of, &c., [the sd will & codls of the sd X]."

Leaseholds
upon trusts
of settle-
ment or
will.

xvii. To HOLD, &c., *to pchaser*, free from all rt or equity of redmon, & from all claims & demands under the hinbfe recited indre of mtge.

Freeholds
or lease-
holds free
from equity
of redemp-
tion.

xviii. To HOLD the same UNTO the sd, *married woman*, her hrs & assns [*for leasehds*, exs, ads, & assns, henceforth, &c., *as in form xiv.*], [as her separate ppty independently of her psnt or any future husbd] (*d*).

Freeholds
or lease-
holds to
married
woman.

all the covts, powers, & provons contd in the hinbfe recited indre of assnmt of, &c., or orwise subsistg, for securg the paymt, pformce, & observe of & indemnifying the sd, *vendor*, his exs, ads, & assns in respt of such remaing portion of the sd entire rent & any breach of the sd covts & condons in relon to such remaing portion of the premes [& subjt, *to tenancies, &c.*]."

(*d*) A conveyance may now by virtue of the Married Women's Property Act, 1882, ss. 1 & 5, be made to a married woman (whenever married) so as *ipso facto*, and without any express declaration that the property is to be her separate estate, to make it such, and to give her the same power of disposition as if she were a *feme sole*. Previously to the Act, as the separate estate was only an equitable creation, her power of disposing of it as a *feme sole* did not extend to the legal estate, unless (in the case of freeholds) a power of appointment over the use was limited to her; the proper mode of conveyance so as to exclude the husband being to interpose a trustee, and (for freeholds) to make the conveyance to such uses as the married woman should by deed or will appoint, and in default to the use of the trustee for her for her separate use. But as the statutory separate estate operates at law as well as in equity, there is now no object in giving a power of appointment, or interposing a trustee; and the words in the second bracket, being merely declaratory of the intention that the Act is to apply, might be omitted; but it seems better to insert them.

As to con-
veyances
to married
women.

Freeholds
and lease-
holds as
partner-
ship pro-
perty (a).

XIX. To HOLD the same UNTO [& to the use of] the sd, *ptners*, their hrs [exs, ads] & assns as jt tenants [*if leasehds, for residue of term, &c., form xiv.*], in trust for them, the sd, *ptners*, their exs, ads, & assns as pt of their co-ptnp este [but so that after the death of eir of them, the sd, *ptners*, the survivor of them or the hrs, exs, or ads of such survivor shl have full power, witht the concurrence of the exs or ads of the one of them so first dying, to sell, mtge, lease, or orwise dispose of the premes, or any pt thof, & to rece & give effectual dischges for any moys arisg from any such disposon, & that every such disposon or rect shl be absolutely bindg upon all psons havg or claimg any intt in the ptnp este (b)].

Proviso
restricting
implied
grant of
light and
air.

XX. To HOLD, &c., subjt to the provon & declon next hinafter contd, that is to say, Provided always & it is hby decld that the sd, *pchaser*, his hrs or assns, shl not be entled to any rt of light or air wch wd in any mner diminish or interfere with the free & unrestrictive user of any adjoining ppty now belonging to the sd *vendor*, eir for bldg or any other ppose, & the assurse hinfte contd shl not be deemed or construed to imply the grt of any such rt.

Personalty.

XXI. To HOLD the same UNTO the sd, *pchaser*, his exs, ads, & assns, for his absolute benefit, *or*, "absolutely."

COVENANTS FOR TITLE.

PRELIMINARY NOTE.

Implied
covenants
for title
under the
Conv. Act,
1881.

The Conv. Act, 1881, s. 7, contains provisions whereby a conveyance made by deed of any property, real or personal, may, by inserting the appropriate words, be made to imply, in the case of a conveyance for value, whether by way of sale, mortgage, settlement or otherwise, the ordinary covenants for title and further assurance; or in the case of a conveyance, whether for value or not, by a trustee or mortgagee, or other person in a fiduciary position, the ordinary covenant against incumbrances; so as to render the insertion

(a) This is considered to be the proper form. The subject is discussed in an article in 33 Sol. J. 103. See Partnership Act, 1890, 53 & 54 Vict. c. 39, s. 20.

(b) The words in brackets should be inserted in cases where there is a probability of some shares becoming settled, which might give rise to difficulties if the concurrence of all the beneficiaries was necessary.

of express covenants unnecessary. The provisions relating to mortgages and settlements will be noticed under those headings. The following is the substance of those relating to conveyances on sale.

First, In a conveyance *for value* (other than a mortgage), where a person *conveys and is expressed to convey* as "beneficial owner," the Act implies the usual qualified covenants by him for title and further assurance, as regards the subject matter *expressed to be conveyed* by him (sub-s. (1) A); and also in a conveyance of leaseholds, that the lease is valid, and that the rent has been paid and the covenants performed (sub-s. (1) B).

By beneficial owner.

The general effect of the clause, stated shortly, is that the liability under the covenants extends to the acts of every ancestor, testator or settlor under whom the conveying party derives title since the last conveyance for value (not being a marriage settlement), and to the acts of persons claiming under the conveying party or any such ancestor, testator or settlor (as to which see *David v. Sabin*, [1893] 1 Ch. 523, discussed 37 Sol. J. 400), and to the acts of any person conveying by direction of the conveying party. The fact that a defect in the title appears in the conveyance or is otherwise known to the purchaser does not alter the effect of the covenants for title, *Page v. Midland Rail. Co.* [1894] 1 Ch. 11. The exception as to marriage settlements was no doubt inserted on the ground that such a settlement may not contain full covenants for title; see s. 7, sub-s. (1) E.

To whose acts the covenants extend.

In reading the statutory covenants into the deed it will be seen that the first branch (for right to convey) being that "the covenantor, with the concurrence of the persons, if any, conveying *by his direction*, has power to convey," does not fit the common case of a person joining to release a charge who is under no obligation to do so, and cannot properly be made to convey "by direction" of the vendor, *e.g.*, a mortgagee who is not fully paid off, or an annuitant. To avoid inaccuracy the concurring parties might be made to convey "by the direction" of the implied covenantor "for the purpose only of implying the proper covenants;" which, however, would make the covenantor liable for the acts of the concurring parties. But this flaw in the Act, arising from the erroneous introduction into the covenant for right to convey of the words "by his direction" is not regarded in practice as of any moment.

Effect of covenants where there are concurring parties.

Secondly, In any conveyance by a person who *conveys and is expressed to convey* as "trustee" or "mortgagee," or as "personal representative of a deceased person," or as "committee of a lunatic," or "under an order of the Court," the Act implies the usual qualified covenant by him (as to his own acts, &c., only), against incumbrances, as regards the subject matter *expressed to be conveyed* by him (sub-s. (1) F.).

By fiduciary owner.

There are some cases to which none of the above expressions are strictly appropriate, *e.g.*, an annuitant or person having a mere lien, or the liquidator of a company; the statutory words might be used in such a case to imply the covenant; but it is better to insert an express covenant. Occasionally a person covenants against incumbrances and also for further assurance; in that case an express covenant is necessary for the latter purpose (the statutory covenant for further assurance implied by the words "as settlor," see SETTLEMENTS, not being appropriate), and had better be inserted for the former purpose also.

Annuitant or person having lien.

In a voluntary conveyance no covenant would be implied by the grantor conveying "as beneficial owner," as those words only raise covenants in a conveyance for value (see above); but if he conveys "as settlor," a limited covenant for further assurance would be implied (see SETTLEMENTS). The

Voluntary conveyance.

full covenants might be implied by express words incorporating them; but it is not usual to insert them in such a case.

Extent of covenants.

The statutory covenants extend to the whole fee simple or other estate or interest *expressed to be conveyed* by the implied covenantor, whatever his actual estate or interest may be, or may appear to be on the face of the conveyance.

By several parties.

Where more than one person joins in the conveyance, the covenant implied in the case of each of them extends to the subject matter or share of subject matter *expressed to be conveyed* by him (sub-s. 1).

By directing party.

The Act also provides for the case of a person who joins in the conveyance merely as a directing party, by enacting (sub-s. 2) that if one person conveys by the direction of another who is "*expressed to direct as beneficial owner*," the same covenants by the latter shall be implied as if he had conveyed and been expressed to convey "*as beneficial owner*" the subject matter conveyed by his direction. A tenant for life or other person who is merely a consenting party and has no power to direct the conveyance, may be made to do so for the purpose only of implying covenants for title; or he may for this purpose convey, by way of confirmation, as beneficial owner (in which case, however, the covenant for right to convey would be faulty, see above); or the statutory covenants may be incorporated by express words.

Consenting party.

By a married woman.

The implied covenants may be raised in the case of a married woman who joins in the conveyance (see sub-s. 3) so as, by virtue of the Married Women's Property Act, 1882, s. 1, to bind her separate estate in the same manner as if the covenant were express; and it is provided (sub-s. 3) that if the wife conveys "*as beneficial owner*," and the husband also conveys as "*beneficial owner*," then the wife is to be deemed to convey and to be expressed to convey by direction of the husband as beneficial owner, and in addition to the covenant implied on the part of the husband there is also to be implied a covenant by him in the same terms as the covenant implied by the wife, the effect being that three covenants are implied; *first*, by the wife, binding her separate estate as to the acts of herself and persons under whom she claims; *second*, by the husband, as to the acts of himself and the person under whom he claims; *third*, by the husband, as to the acts of the wife, and persons under whom she claims.

By husband and wife.

Benefit of implied covenants.

The implied covenants are in every case with the person to whom the conveyance is made, or with the persons jointly if more than one to whom the conveyance is made as joint tenants, or with each of the persons if more than one to whom the conveyance is made as tenants in common (sub-s. 1); and the benefit of them goes with the estate of the implied covenantee, and (by sub-s. 6) is enforceable by every person in whom such estate is wholly or partially vested, and where the covenant is with two or more, the benefit is to survive (s. 60). In a conveyance to uses the implied covenants would (in the same manner as express covenants) be with the grantee to uses. Where, however, the conveyance is made by appointment direct to the uses of a settlement, each person who takes as a purchaser under the settlement appears to be "*a person to whom the conveyance is made*," so that he and all persons claiming under him will be entitled to the benefit of the implied covenants.

Construction.

By s. 64, in the construction of an implied covenant words importing the singular may be read plural, and *vice versa*, and the masculine gender the feminine.

Application of the Act.

The implied covenants may be varied or extended by deed (sub-s. 7).

The enactment applies to every description of assurance by deed, and whether by grant, assignment, appointment, or otherwise, of any kind of

property, real or personal, including a covenant to surrender copyholds (see the definition of "conveyance" in s. 2); but not to a customary assurance, otherwise than by deed, of copyhold or customary land, nor to a lease at a rent (sub-s. 5). Although the right to admittance generally arises only on a surrender, by the special custom of some manors it may be conferred by deed (*Thompson v. Hardinge*, 1 C. B. 940), in which case the enactment would of course apply (see Hood and Challis, 34).

The statutory covenants are sufficiently in accordance with the previously established practice, to be adopted, and they are practically universally relied on in all ordinary cases; but occasionally it may be necessary to insert express covenants (as where the property is situate abroad), or to vary the statutory covenants. Adoption of Act.

As to the protection afforded to solicitors and trustees adopting the Act, see above, p. 228, note.

In order to raise the proper statutory covenants, it is essential that the conveying party should expressly convey or direct the conveyance "as beneficial owner," or convey as "trustee" or "mortgagee," &c., as the case may be. Without these or other words mentioned in the Act no covenant will be implied, although the fact that the conveyancing party is beneficial owner or trustee, &c., may appear from the recitals or otherwise (see sub-s. 4). Use of particular words is essential.

It must not be supposed that because the word "convey" is used in this section, and in the forms in the 4th schedule to the Act, it is therefore necessary to use that particular word to imply the covenants. The word "convey" in the Act includes all the ordinary modes of conveyance (see s. 2, and above, page 349, note); and it is quite clear that the ordinary operative words of conveyance will suffice, both to pass the estate and raise the covenants for title. As to word 'convey'

It is necessary, where tenants in common or others having limited interests join in conveying, to insert words defining the particular share or interest which each party conveys, in order that the implied covenant of each may extend to such share or interest only, and not to the entirety; or else to limit the operation of the covenant in this respect by a subsequent proviso, which is often better. Conveyance by tenants in common, &c.

In a conveyance by joint tenants, or by donees of a joint power of appointment, as they jointly convey the entirety, the implied covenant would it seems be a joint one extending to the entirety; and if it is desired to limit the liability of each to the share to which he would be entitled on a severance, a proviso qualifying the statutory covenant must be inserted. By joint tenants.

Reference may here be made to the Lands Clauses Consolidation Act, 1845, s. 132, by which the word "grant" in a conveyance by a railway or other company under that Act, implies the usual covenants for title. See also, 1 & 2 Vict. c. 20, s. 22 and the Acts referred to in Elph. Introd. p. 87. As to the construction of covenants for title see Elph. Interp. 473. "Grant" under L. C. C. Act, 1845.

The common forms of express covenants for title, &c., with the ordinary variations indicated in notes, are here given, as, although they can rarely be necessary in conveyances of land in England, they may be required in conveyances of land in the colonies.

I.

FREEHOLDS *and* LEASEHOLDS *by* ONE VENDOR *to* ONE PURCHASER.
With VARIATIONS (a).

That lease
is good,
&c.

That rent
and cove-
nants paid
and per-
formed.
For right
to convey

Covenants
when ex-
tended to
acts of
ancestors
and
testators.

Variations.
Several
leases.
Other
parties
concurring.

Other
forms of
conveyance.

To uses of
settlement
or will.

Leases or
incum-
brances,

AND THE sd, *vendor*, doth hby, for himself, his hrs, exs, & ads (b), covt with the sd, *pchaser*, his hrs, exs, ads, & assns, that notwg anything by him, the sd, *vendor*, [or any of his ancestors or testors] [or the sd X. deced] done, omitted, or knowingly suffered to the contrary, the sd lease is now valid & subsistg & in nowise forfeited, surrendered, or become void or voidable: AND THAT the rent & covts on the pt of the lessee & condons by & in the sd lease reserved & contd have been duly pd, observed, & pformed up to the date of these psnts: AND THAT notwg anything by him the sd, *vendor*, [or any of his ancestors or testors] [or, the sd X. deced] done, omitted, or

(a) Where a vendor can present a clear title, which he claims under a purchase for valuable consideration, he covenants only for his own acts. In the case of a title derived under a will or intestacy the covenant extends to the ancestors and testators respectively. The words in brackets "or the said X., deceased," are applicable where the covenant extends only to the acts of a particular ancestor or testator. Under the statutory covenants a vendor claiming under a settlement (whether voluntary or for value), would be liable also for the acts of the settlor; see p. 399.

For several leases, say "respive leases," and "respive terms, &c."

If trustees, mortgagees, or other parties join in the conveyance, the covenant will be that "the sd, *vendor*, with the concurrence of the sd, *other conveyg pties*, now hath full power, &c."

For the word "assure," the words "grt," "appt," "appt & grt," "rele," or "convey," may be substituted according to the nature of the conveyance.

In a conveyance to the uses of a settlement or will, or any uses less simple than to the purchaser in fee, substitute for the words "to the use of the sd, *pchaser*, his hrs & assns," the words "to the uses and in mner hinfte expd."

The above form is applicable to a sale subject to leases or incumbrances. If not required, the word "subjt, &c." will be omitted throughout.

(b) In this and the following forms of express covenants the words "hrs, exs, & ads," of the covenantor, and "hrs & assns," of the covenantee are retained on the supposition that the forms will only be used in the case of conveyances of land in the colonies.

knowingly suffered, he the sd, *vendor*, now hath full power to assure all the sd freehd hds & premes hinfte expd to be hby assured to the use of the sd, *pchaser*, his hrs & assns, subjt as afsd, or, "subjt to the sd respive leases, chges, & incumbces to wch the assurse hby made is hinfte expd to be subjt," & to assn all the sd leasehd hds & premes hby assned unto the sd, *pchaser*, his exs, ads, & assns for all the residue now unexpired of the sd term in mner & subjt as afsd: AND THAT the sd freehd premes & every pt thof shl remain & be to the use of the sd, *pchaser*, his hrs & assns in mner afsd, & that the sd leasehd premes shl durg the residue of the sd term remain & be to the sd, *pchaser*, his exs, ads, & assns, in mner afsd, & that all the sd hds & premes shl be quietly entd into & upon & held & enjoyed, & the rents & profits thof reced accdly subjt as afsd witht any interruption, claim, or demand by the sd, *vendor*, his hrs, exs, or ads, or any pson claimg under or in trust for him [or any of his ancestors or testors] [or, the sd X. deced] other than & except any pson or psons claimg in respt of any of the chges or incumbces afsd: AND THAT dischged from or orwise by the sd, *vendor*, his hrs, exs, or ads sufftly indemnified agst all incumbces, claims, & demands created by him the sd, *vendor*, [or any of his ancestors or testors] [or, the sd X. deced] or any pson or psons claimg or to claim through, under, or in trust for him, them, or any of them save as afsd: AND THAT he the sd, *vendor*, & every pson havg or claimg any este, rt, or intt in or to the sd freehd & leasehd premes resply, or any of them, or any pt thof resply, under or in trust for him the sd, *vendor* [or any of his ancestors or testors] [or, the sd X. deced] will at all times, at the cost of the pson or psons requirg the same, exte & do all such assurces & acts for the further or more effectually assurg the sd freehd premes, or any pt thof resply, to the use of the sd, *pchaser*, his hrs & assns, in mner & subjt as afsd, & assng the sd leasehd premes, or any pt thof, unto the sd, *pchaser*, his exs, ads, & assns for the residue wch shl be then unexpired of the sd term, in mner & subjt as afsd, as shl be reasbly required.

and assign,
&c.For quiet
enjoyment.Free from
incum-
brances.For further
assurance.

II.

FREEHOLDS *in a conveyance by* JOINT TENANTS, TENANTS IN COMMON, *or, COPARCENERS, one being a* MARRIED WOMAN *whose* HUSBAND *joins.* VARIATIONS, *where the parties are interested in* UNEQUAL SHARES. *Also for a conveyance by* TENANT *for* LIFE *and* REMAINDERMEN (a).

For right
to convey.

AND (b) each of them the sd, *covtors by name, [or, the sd* pties *hto of the — & — pts,]* so as to be ansble or liable only in respt of, *if jt tenants, “one eql — share of or in the sd hds & premes hby assured,” if tenants in common or coparceners, “the share or intt of or in the sd hds & premes hby assured to wch the covtg pty or his wife is or claims to be entled, or has or claims to have power to appt or dispose of as afsd,” & only in respt of the acts & defaults of himself or herself, & of his or her ancestors or testors, & of psons claimg under or in trust for him, her, or them respdy, [& in the case of the sd, husbd, in respt of the acts & defaults of the sd —, his wife, & of psons claimg under her, but not further or orwise,]* doth hby for himself or herself, his, her hrs, exs & ads, covt with the sd, *pchaser or grtee to uses, his hrs & assns, that notwg anything by them, the sd covtg pties, or any of them, or any of their ancestors or testors, or any pson claimg under or in trust for them or any of them. done, omitted, or knowgly suffered to the contrary, they, the sd covtg pties respdy now have full power, for rt to convey as in No. I. : For quiet enjoymt, as in No. I., witht any interruption, claim, or demand by the sd covtg pties or any of*

For quiet
enjoyment.

(a) For other variations, see note to last form.

(b) For conveyance of a tenant for life and remaindermen, say,

Variation
for convey-
ance by
tenant for
life and
remainder-
men.

“AND the sd, *tenant for life, so far as relates to the title & further assurse of the sd hds & premes hby assured durg his life, & each of them the sd, remrmen, so far as relates to the title to & further assurse of one eql — pt or share of or in the same premes, or, ‘the pt or share of or in the premes to wch he is or claims to be entled as afsd,’ in remr expectant on the life este of the sd, tenant for life, thrin doth hby, &c.”*

them, or any pson claimg under or in trust for them or any of them, or any of their ancestors or testors: AND THAT dischged from, or orwise by the sd covtg pties resp'y, or their respive hrs, exs, or ads, indemnified agst all estes & incumbrances created by the sd covtg pties, or any of them, or any of their ancestors or testors, or any pson claimg under or in trust for them or any of them: AND FURTHER that the sd covtg pties resp'y, & every pson havg or claimg any este, rt, or intt in or to the premes, or any pt thof, under or in trust for them, or any of them, or any of their ancestors or testors, will at all times hrafter, &c., *for further assurce, as in No. I.*

Free from
incum-
brances.For further
assurance.

III.

PERSONAL PROPERTY. VARIATION *for life* POLICY.

AND the sd, *vendor*, doth hby for himself, his hrs, exs, & ads, covt with the sd, *pchaser*, his exs, ads, & assns, that notwg anything by him, the sd, *vendor*, [or the sd X. deced], done, admitted, or knowgly suffered to the contrary (*d*), he, the sd, *vendor*, now hath full power to assn the premes hinbfe assned unto the sd, *pchaser*, his exs, ads, & assns in mner afsd, free from incumbrances: AND THAT he, the sd, *vendor*, & every pson havg or claimg any este, rt, or intt in or to the premes, or any pt thof, under or in trust for him [or the sd X. deced] will at all times, at the cost of the sd, *pchaser*, his exs, ads, or assns, exte & do all such assurces & acts for the further or more effectually assurg the premes or any pt thof unto the sd, *pchaser*, his exs, ads, & assns, & enabl'g him & them to recover, rece & obtain paymt & transfer of the same as shl be reasbly required.

For right
to assign,
&c.For further
assurance.

(*d*) For a policy of assurance say, "the sd poly is now valid & subsistg & in nowise forfeited or become void or voidable & that notwg any such thing as afsd," and describe the property as "the said poly & premes hinbfe assned."

Policy.

IV.

COVENANT *against* INCUMBRANCES *by* ONE *with* ONE *for* REAL *or* PERSONAL *Estate*. VARIATIONS *for* a conveyance to JOINT TENANTS, *or* TENANTS *in* COMMON.

AND the sd, *covtor*, doth hby for himself, his hrs, exs, & ads, covt with the sd, *pchaser or grtee to uses*, his hrs [*for leasehds or psonalty*, his exs, ads], & assns (a), that the sd, *covtor*, hath not at any time htofore done, or knowgly omitted or suffered, or been pty or privy to anything whby or by means whof the premes hinbfe assured (b), or any pt thof, are, is, or may be incumbered or affected in any mner whatsr, or whby he, the sd, *covtor*, is in anywise prevented from assurg the same premes, or any pt thof, in mner afsd.

V.

COVENANT *against* INCUMBRANCES *by* TWO *or* more *with* ONE *for* REAL *or* PERSONAL *Estate* (c).

AND each of them the sd, *covtors*, so far as relates to his own acts & omissions only, doth hby for himself, his hrs, exs, & ads, covt with the sd, *pchaser or grtee to uses*, his hrs [*for leasehds or psonalty*, his exs, ads], & assns, that they the sd *covtors*, or, "the sd covtg pties," resp'y, have not at any time htofore done, or knowgly omitted or suffered, or been pty or privy to anything whby or by means whof the premes hinbfe assured or any pt thof, are, is, or may be incumbered or affected in any mner whatsr, or whby they, the sd, *covtors*, or "the sd covtg pties," resp'y, are in anywise

(a) For a conveyance to joint tenants say, "their hrs, *or*, 'exs, ads,' & assns." For a conveyance to tenants in common, add, "& as a septe covt with each of them, &c."

(b) For "assured" and "assurg," the words "grted," "grtg," or as the case may be, may be substituted, see note (a) to Form 1.

(c) For variations for conveyance to joint tenants or tenant in common, &c., see notes to last form.

prevented from assurg the same premes, or any pt thof, in mner afsd.

IMPLIED COVENANTS (d).

- | | |
|--|-----------------------------|
| I. THE sd, <i>vendor</i> , as benefl owner, doth hby grt [<i>or, assn, appt, or as the case may be</i>], &c. | Absolute owner (e). |
| II. THE sd, <i>vendors</i> , as benefl owners do hby grt [<i>or, assn, appt, or as the case may be</i>], &c. | Joint tenants (f). |
| III. THE sd, <i>vendors</i> , each of them conveyg as benefl owner of one undivided moiety [eql — share] of the hds & premes hby assured, <i>or</i> , “ of the respive share, este, or intt in the hds & premes hby assured to wch he is or claims to be entled as hinfte appears,” & all other (if any), his este or intt thrin, do resply hby grt, &c. | Tenants in common (g). |
| IV. THE sd A., as benefl owner as to one undivided eql — share of & all other if any his este or intt in the hds & premes hby assured, & the sd B., as benefl owner as to one undivided eql — share of & all other (if any) his este or intt in the same premes, &c., &c., do resply hby grt, &c. | The same. Another form (g). |

(d) See above, p. 398 *et seq.*

(e) This implies the usual covenants for title and further assurance by the vendor.

(f) This implies the usual covenants for title, &c., by the vendors jointly, extending to the entirety of the property. If it is desired to restrict the covenants to the shares to which they would be entitled on a severance, the proviso, p. 411, should be inserted.

(g) These imply the usual covenants for title, &c., by each of the vendors extending to his own share only. In defining the shares or estates which each party conveys with the object of restricting his covenants for title, care is required that this does not operate also to restrict the operation of the conveyance in case the share or interest of any of the parties should be misstated, and should in fact be greater. The general words, “ and all other, &c.,” are therefore added. See another form of such general words at the end of Form XII., *infra*. Where the interests of the conveying parties are various, and appear from the recitals, it may be simpler and less troublesome to make the parties convey “ accdg to their respive estes, shares, powers, & intts, as hinfte appearg, and all other (if any) their respive estes, &c.,” without defining, but with a statement of the character, whether as beneficial owner or trustee, &c., in which each conveys; if this form is adopted it will be unnecessary to limit the operation of the covenants by the proviso at p. 411.

Tenant for life, and remainderman in fee or tail (b).

V. THE sd A., as benefl owner as to the este for his life in the hds & premes hby assured, & the sd B., as benefl owner as to the revon in fee simple expectant on the life este of the sd A. in the same premes, do resply hby grt, &c.

Wife (c).

VI. THE sd, *wife*, as benefl owner [with the concurrence of the sd, *husbd*] doth hby, &c.

Husband and wife (d).

VII. THE sd, *wife*, as benefl owner, doth hby grt, & the sd, *husbd*, as benefl owner, doth hby grt, & confirm, &c.

Various beneficial owners. Variation for married woman (e).

VIII. THE sd, *vendors*, each of them conveying as benefl owner of the respive [share] este or intt in the hds & premes hby assured to wch he is or claims to be entled [or wch he has power to appt or dispose of], as hinfte appears, & all other (if any) his este or intt thrin, [& the sd, *husbd & wife*, each of them conveying as benefl owner of the [share] este or intt in the same premes to wch the sd, *wife* (f), is or claims to be entled [or, has power to appt or to dispose of], as hinfte appears], & all other, &c., do resply, accdg to their respive [shares] estes & intts [& powers], grt, &c.

Trustees, mortgagors, &c. (g).

IX. THE sd — as trees [of the hinfte recited indre of settlemnt, or, “will”] or, “as mtgees,” or, “as psonal repves of the sd X., deced,” or, “as committee of the sd X.,” or, “under the hinfte recited order of, &c.,” do resply [doth] hby grt, &c.

(b) This implies covenants for title, &c., by A. as to his life estate, and by B. as to the reversion in fee.

(c) This implies the usual covenants for title, &c., by the wife as to the acts of herself and her ancestors, &c., binding her separate estate, but no covenant by the husband. If the wife has power to dispose of the property as a *feme sole* under the Married Women's Property Act, 1882, or otherwise, the husband's concurrence is of course unnecessary, unless it is desired to obtain covenants from him, as in the next form.

(d) As to what covenants this implies, see p. 400.

(e) This implies covenants for title, &c., by each party limited to the share or interest conveyed by him, the husband's covenant also extending to the wife's share.

(f) If both the marriage and the acquisition of the property were before 1883, add here, “or the sd, *husbd*, in her rt”; see the Married Women's Property Act, 1882, ss. 1, 2, 5.

(g) This implies a covenant against incumbrances by each of the conveying parties as to his own acts, &c., only. There is of course no objection to referring to the settlement or other instrument under which the trust arises.

X. THE sd — as trees, or as the case may be, see *preceding form*, by the diren of the sd Z., directg as benefl owner, do hby grt, or, “appt,” [& the sd Z., doth hby convey & confirm,] &c. Directing party (h).

XI. THE sd — as trees, &c., or as the case may be, see *form IX.*, with the consent, or, “at the reqt,” of the sd Z. [& for the ppose only of implying covts by the sd Z. for title & further assurse by the diren also of the sd Z., directg as benefl owner], do hby grt, or, “appt,” & the sd Z. [as benefl owner], doth hby convey & confirm, &c. Consenting party (i).

XII. THE sd A., as benefl owner, as to one moiety of a moiety (being one eql fourth pt of the entirety) of the hds & premes hinafter descd & assured, doth hby grt, & the sd B. & C., as trees & as to the one eql — pt of a moiety of the same premes to wch the sd D. is or claims to be benefly entled, at his reqt, do hby grt, & the sd D., as benefl owner, as to such last-mentd — pt of a moiety, doth hby grt & Form in conveyance of various interests in freeholds held in undivided shares (k).

(h) This implies the same covenant as the preceding form, and in addition the usual covenants for title, &c., by Z., extending to the acts of the trustees. This or the next form may be used where a beneficiary joins in a conveyance by trustees to covenant for title. No additional covenants are implied by making Z. also convey as “beneficial owner;” see p. 400.

(i) This implies the same covenants as the last form, if the words of direction (which are bracketed) are inserted; or in lieu of this, Z. may be made to convey by way of confirmation “as beneficial owner,” by inserting those words in the subsequent part of the clause, which would imply the same covenants by Z. except that they would not then extend to the acts of the trustees, and the covenant for right to convey would be faulty; see p. 400. The words of direction, unless qualified as above, may in this case be objectionable, and if the sale is by trustees, might imply a breach of trust, as they might be doing wrong in conveying by the direction of Z. If preferred the statutory covenants may be incorporated in this case by a separate clause; see p. 410, Form XIII.

(k) This implies covenants for title by A., D. and G. as to their respective shares; by K. as to the share conveyed by his direction; by L., binding her separate estate, and by M., her husband, as to her share; by N. as to his life estate in, and O. as to the reversion in fee of, their share; and covenants against incumbrances by B., C., and H., as trustees, and E. and F., as mortgagees, as to the shares conveyed by them; in the case of P., who releases a charge of an annuity, as the statutory words are not appropriate, the covenant against incumbrances is expressly incorporated. In the case of trustees and mortgagees, as they covenant as to their own acts only, there is not the same necessity as in the case of beneficial owners for defining the precise shares of interests conveyed by them though it is here done. As to the above mode of restricting the covenants, see p. 401.

confirm, & the sd E. & F., as mtgees & as to one eql — share of the premes, by the diron of the sd G., do hby grt, AND the sd G., as benefl owner, as to such last-mentd — share, doth hby grt & confirm, AND the sd H., as tree as to one eql — share of the premes, in exercise of the power for this ppose vested in him, under the hinbfe recited indre of, &c., & of every other power, &c., & with the consent (hby testified) & by the diron of the sd K., directg as benefl owner, doth hby appt & convey, & the sd L., as benefl owner, as to one other eql — share of the premes (a), doth hby grt, & the sd M., as benefl owner, as to such last-mentd — share, doth hby grt & confirm, & the sd N., as benefl owner, as to his este for life in one other eql — share of the premes, & the sd O., as benefl owner, as to the revon [*or, “remr” (b), as the case may be*] of the same share after the dece of the sd N., do resply hby grt, AND the sd P., as to his sd anny, & to the intent that the usual statutory tree's covt agst incumbces shl be deemed to be hby implied on his pt, doth hby rele & all of them the sd respive conveying psons pties hto of the first — pts as to all other (if any) the shares, estes, or intts in the premes wch they resply are entled to or have power to dispose of, do resply hby convey, appt, assure, & rele, &c., unto, &c.

Clause in-
corporating
statutory
covenants
for title
(c).

XIII. AND it is hby decl'd that the same covts shl be deemed to be implied by these psnts on the pt of the sd Z. for the title to & further assurse of the sd premes hby assured, as if he [had joined in the assurse thof hby made, &] had been expd to assure the same as benefl owner [& the other pties makg or concurrng in such assurse had been expd so to do by his diron] (d).

Clause in-
corporating
statutory
covenant
against
incum-
brances.

XIV. AND it is hby decl'd that the same covt shl be deemed to be implied by these psnts on the pt of the sd Z., as if he had been expd to assure [rele] the premes hby assured as tree [mtgee].

(a) If both the marriage and the acquisition of the property were before 1883, add here, “& with the concurrence of the said M., her husb.” See the Married Women's Property Act, 1882, ss. 1, 2, and 5.

(b) As to the difference between reversion and remainder, see Co. Litt. 49a, 142b; Challis, R. P. 67.

(c) See p. 398 *et seq.*

(d) See p. 399.

PROVISOS.

I. PROVD ALWAYS, & it is hby agrd, that the liability of each of them, the sd, *conveying pties*, or, "the sd pties hto of the first — pts," resp'y & their respive hrs, exs, & ads under the covts wch are implied by law by reason of their resp'y hby conveying & being expressed to convey as *benefl owners* shl extend to one eql undivided — share only of the premes, or, "to the share, este, or intt of or in the premes to wch he is or claims to be entled, or wch he has or claims to have power to appt or dispose as *hinfte* recited, & not further," or, "the liability of the sd respive, *conveying pties*, &c., &c., as above, shl be limd as follows (that is to say), the sd A. shl be liable under such implied covts to the extent of one eql third pt of the premes & not further, the sd B. & C. (f), his wife shl be liable thrunder to the extent of one eql third pt of the premes & not further, &c., &c."

Proviso restricting liability under statutory covenants of joint tenants or tenants in common, &c. (e).

II. PROVD ALWAYS that, as respts the revon (g) [*or, remr, as the case may be*] expectant on the life este of the sd, *life tenant*, in the premes, & the title to & further assurse of the premes after his death, the covts by the sd, *life tenant*, wch are implied by law by reason of his hby conveying & being expd to convey as *benefl owner* shl not extend to the acts or defaults of any pson or psons other than or besides himself & his own hrs [exs or ads], & psons claimg through or in trust for him, them, or any of them.

Proviso restricting covenants by tenant for life (h).

III. PROVD ALWAYS, & it is hby decl'd that the covts of the sd A., wch are implied by reason of the sd B. being expd to convey by his *diron* as *benefl owner* shl not extend so as to

Proviso restricting liability of directing

(e) See p. 401.

(f) The husband need not concur where the marriage or the acquisition of the property was after 1882; see note (a) last page.

(g) See note (b), last page.

(h) This form is intended for a case where a tenant for life enters into covenants for title, express or statutory, on a sale by the trustees and the covenants extend to the acts of a prior owner, e.g., a testator or settlor; but if the covenants do not so extend the proviso is not required. The proviso is adapted also to a conveyance by a tenant for life under the Settled Land Act, 1882. It requires consideration whether a restriction of the statutory covenants may not in some cases be desirable to preclude such a case as *David v. Sabin*, [1893] 1 Ch. 523.

party under
statutory
covenants.

Proviso
limiting
liability
of cove-
nantors
to their
shares
of the
purchase-
money (a).

render him liable in respt of the acts or defaults of the sd B., or of any pson claimg under him.

IV. PROVD ALWAYS, & it is hby agrd, that the total amt recoverable from each of them the sd — & —, or from his hrs, exs, or ads, by way of damages under the respive covts by them the sd — & — resply hinfte contd, or, “wch are implied by statute,” for the title to & further assurse of the premes hby assured, shl not exceed the sum of £—, or, “the sevl sums hinafter mentd, namely, from the sd —, his hrs, exs, or ads, the sum of £—, & from the sd —, his hrs, exs, or ads, the sum of £—.”

(a) This mode of restricting the liability though sometimes adopted in practice, seems scarcely defensible, the proper mode being to restrict the liability to the respective interests of the covenantors in the estate; see 2 Dart, V. & P. 895.

COVENANTS FOR PRODUCTION OF DEEDS (b).

I.

FULL form of COVENANT by one VENDOR with one PURCHASER for PRODUCTION of deeds; with proviso for SUBSTITUTED COVENANT on the vendor PARTING WITH the deeds. VARIATIONS for LEASEHOLDS or PERSONALTY, for a CONVEYANCE by or to JOINT TENANTS or TENANTS IN COMMON, and where the covenant for production is contained in a SEPARATE DEED.

THE sd, *vendor*, doth hby, for himself, his hrs, exs, ads, & assns, covt with the sd, *pchaser[s]* or *grtee[s]* to uses, his

To produce deeds.

(b) The Conv. Act, 1881, s. 9, contains provisions intended to obviate the insertion of the full covenants for production and safe custody of documents by substituting very short forms of:—1. An acknowledgment of the right to production and delivery of copies; and, 2. An undertaking for safe custody; to which an operation is given similar to that of the old form of covenant by trustees or mortgagees (Form 11.), in respect of the personal liability ceasing on the covenantor parting with the deeds, but the obligation attaching on the deeds against the holder for the time being; whereas the liability under the old form of covenant of a beneficial owner continues after he parts with the deeds unless there is a proviso for cesser of the liability on his procuring a substituted covenant (see Form 1.), and this is procured; which, however, it seldom was on account of the trouble and expense. The Act has led to an assimilation of the practice in the two cases.

Statutory covenants for production and custody of title deeds.

The statutory covenant differs from the old trustees' and mortgagees' covenant in this, that the latter imposes a liability only while the covenantors have the "actual custody" of the deeds, but, under the statute, they are liable while having the "custody or control" of them; this is of no importance as regards the covenant for production, but it renders the statutory undertaking for safe custody more onerous than the old express covenant by making the covenantors liable for the loss of the deeds through the defaults of their agents, as well as their own personal defaults; and the undertaking should not be given by trustees or mortgagees or other fiduciary owners. A liability of this kind may attach to deeds delivered to trustees or mortgagees by reason of an undertaking for safe custody given by a previous possessor, but this cannot be avoided. As to the liability of a mortgagee to pay compensation to the mortgagor for the loss of the deeds, see *Hornby v. Matcham*, 16 Sim. 325; *Brown v. Sewell*, 11 Hare, 49; *James v. Rumsey*, 11 Ch. D. 398.

Operation of statutory covenant in case of trustees and mortgagees.

[their] hrs & assns, *in a conrce in common, add*, "& as a septe covt with each of them, his hrs & assns" (a), that he,

Devolution of benefit of acknowledgment and undertaking.

As to conveyance by appointment.

Form of acknowledgment.

Acknowledgment does not include undertaking.

The documents must be in the possession of the covenantor.

A mortgagee is now bound to produce the deeds to any person interested in the equity of redemption: see the Conv. Act, 1881, s. 16.

The benefit of an acknowledgment (by s. 9 (3)) goes to any person (other than a lessee at a rent), claiming under the person to whom it is given. There is no corresponding provision as to the devolution of the benefit of an undertaking for safe custody; but it would no doubt by implication be held to go with the acknowledgment.

In the case of a conveyance by appointment direct to the uses of a settlement or will, the benefit of the statutory acknowledgment as to muniments given to the tenant for life appears not to pass to the remaindermen, as they do not claim through him. A similar difficulty occurs when an express covenant for production is given. This difficulty can be obviated by giving the acknowledgment not only to the tenant for life but also to "all psons claiming hrunder by pchase to the hds hby assured."

The Act applies whether the documents relate to real or personal estate.

The statutory operation of the acknowledgment or undertaking is to be subject to any express provisions contained in it (sub-ss. 12 and 13); it may therefore be modified.

It is important to notice that sub-s. 1 appears to require that the acknowledgment, in order to be effectual, should be of the right not only to production, but also to delivery of copies (and see the form in Schedule IV., 3), so that without the latter words it would have no statutory effect.

A mere acknowledgment does not include a covenant for safe custody (sub-s. 6); if this is intended, an undertaking must also be given under sub-s. 9.

The statutory covenant only applies to documents "of which the covenantor retains possession" (see sub-ss. 1 and 9); the fact that he retains possession should therefore be stated in the acknowledgment or introductory recital. Of course the retaining need be only momentary. Occasionally a vendor covenants for production of documents in the hands of third parties, who cannot or will not give a covenant or acknowledgment, e.g., mortgagees, or the trustees of a settlement; in that case an express covenant in the old form must be given, as the statute would not apply, even though the documents should afterwards come into possession of the vendor, *Re Pursell*, 1893, W. N. 152; the doctrine of estoppel not being applicable to such a case. The statutory form of acknowledgment and undertaking if given in such a case would operate according to its tenor

(a) For leaseholds or personalty substitute throughout the covenant for "hrs," "exs, ads," in the case both of the covenantor and covenantee. The covenantor is made to covenant for his "assns" as the burden of the covenant is to run with the deeds. The words "hrs, exs, & ads," are inserted, as they may be required in conveyances of land in the colonies: see note (b), p. 402. In a conveyance of land in England they may be omitted.

the sd, *vendor*, his hrs or assns (b), will at all times hereafter, unless prevented by fire or other inevitable accident, upon every reasonable reqt, & at the cost of the sd, *purchaser[s]* or *grantee[s]* to uses, his [their] (c) hrs or assns, or any of them, or any person or persons having or claiming through him, them, or any of them, any estate or interest at law or in equity in the premises hereby assured (d), or any part thereof, produce or cause to be produced [in

independently of the statute, and would probably create a more onerous liability than the ordinary express or statutory covenant.

As to the right to possession of deeds, see 33 Sol. J. 655, 670, 683, 695, 706, 714; Elph. Intro., 108.

An acknowledgment or undertaking need not be under seal; if under Stamp. hand only it will require only a 6d. agreement stamp.

As to expenses, see V. & P. Act, see 1874, s. 2 (4), 1 Dart, V. & P. 161. Expenses.

An acknowledgment or undertaking under the Act is to satisfy any liability to give a covenant for production or safe custody respectively (sub-ss. 8 and 11); so that a purchaser cannot, as it seems, insist on the ordinary express covenant, although stipulated for in the contract. But this provision cannot apply where the deeds are not in the covenantor's custody, as the acknowledgment would not in that case have the intended statutory effect. Right of purchaser to express covenant.

Except in the case mentioned above, and where the property is situated abroad, the statutory provisions on this subject entirely supersede the necessity for the insertion of the full covenants for production, &c., and their employment is now practically universal in the case of absolute owners as well as trustees and mortgagees (with the omission in the case of the latter of the undertaking for safe custody); but the ordinary forms of such covenants are here given for comparison with the statutory provisions, and for use in the exceptional cases before mentioned, or in conveyances of land in the colonies. Express covenant now unnecessary.

(b) If the vendors are joint tenants, or tenants in common, the covenant will commence:—"The sd, *vendors*, do hereby, for themselves & their hrs, &c., [if tenants in common, add, & each of them doth hereby, for himself, his hrs, exs, ads & assns], covenant, &c., that they, the sd, *vendors*, their [if tenants in common, respive] hrs [exs, ads] or assns will, &c." The rest of the covenant will be as above. Where one of the vendors is a married woman she may covenant so as to bind her separate estate (see p. 400), or her husband may covenant in her stead.

(c) If the purchasers are tenants in common, insert here and subsequently in the corresponding place, "respive."

(d) Where the covenant for production is contained in a separate deed, substitute here, and subsequently, for "hereby assured," the words "comprised in & assured by the hereinbefore recited indenture of even date herewith."

Furnish
copies.

For safe
custody.

Proviso for
substituted
covenant.

England or Wales, but not elsewhere] to him or them, or his or their solor or agent, or such other pson or psons as he or they shl direct, or in the course of any judicial or other pedgs, or orwise as occasion shl require, all or any of the deeds & writgs mentd in the schdle hrunder written, *or*, "the sd recited indres of, &c.," *or*, "an indre dated, &c., & made, &c., & anor indre dated, &c., & made, &c." [& all other deeds, evidces, & writgs (if any), other than docts of record (a), now in the custody or power of the sd, *rendor*, relatg to the premes hby assured (b), or any pt thof] (c), for the proof, defence, & support of the title & posson of the sd, *pchaser[s]* *or grtee[s]* to *uses*, his [their] hrs or assns, or any such other pson or psons as afsd to the premes hby assured, or any pt thof, & will permit the same to be examined, inspected, or given in evide; AND WILL also at the like reqt & cost of the sd, *pchaser[s]* *or grtee[s]* to *uses*, his [their] hrs or assns, or any such other pson or psons as afsd, make & furnish, or cause to be made & furnished to him or them such true, attested, or other copies or abstracts of or extracts from the same deeds & writgs respby, *or*, "indres," as he or they may require; AND WILL keep the same deeds & writgs, *or*, "indres," safe, whole, & uninjured, fire or other inevitable accident only excepted; Provd always, & it is hby decld, that in case the sd deeds & writgs, *or*, "indres," hinfbe covted to be produced, or any of them, shl at any time hrafter be delivered by the holder or holders thof to any other pson or psons lfully entled to the custody thof, & such pson or psons shl thrupon enter into with, & deliver to

(a) As to documents of record, see 1 Dart, V. & P., p. 160.

(b) See p. 414, note.

What deeds
should be
included in
covenant.

(c) The part in brackets is not usual. Where a purchaser is buying the whole of the vendor's estate, he is entitled to have all the deeds in the vendor's possession handed over; but where he is buying only a part, he is entitled to include in the covenant for production only those abstracted (so decided by Stirling, J., in chambers, in a case of *Re Guest and Worth*, on 20th May, 1889, and see *Cooper v. Emery*, 1 Ph. 388). Otherwise the covenant for production might lead to the disclosure of defects in the vendor's title affecting the other property retained by him which it may have been the object of the condition limiting the commencement of the title to prevent. Mere copies of documents (whether plain, or attested, or office), are not included; nor is it the practice to include probates of wills or letters of administration. As to documents of record generally, see Dart, V. & P., pp. 160, 765.

the pson or psons for the time being entled to the benefit of the covt for prodon hinfte contd, & witht expse to him or them, a covt for the prodon & furnishg copies & safe custody of the deeds & writgs, *or*, "indres," wch shl have been so delivered up, similar to the covt hinfte contd, then & in such case the sd last-mentd covt shl thenceforth be null & void, so far as regards the deeds & writgs, *or*, "indres," to wch the sd substituted covt shl relate.

II.

FULL *form of COVENANT by TRUSTEES or MORTGAGEES or other fiduciary owners for PRODUCTION of deeds (d).*

THE sd, *trustees or mtgees*, as to their own respive acts & defaults only, & not those of each other, & so as to bind themselves & their repves respily only while havg the actual custody of the deeds & writgs hby covted to be produced, & so far as practicable, to bind such deeds & writgs into whosoever hands the same may come, but not so as to incur any liability in relon thto further or orwise, do hby for themselves respily & their respive hrs, exs, ads, & assns, covt with the sd, *pchaser or grtee to uses*, his hrs, *or*, "exs, ads," & assns, that they, the sd, *trustees or mtgees*, or some or one of them, their or some or one of their, hrs, *or*, "exs, ads," or assns, will at all times hrafter, &c. [*as in No. I. (e), omittg the provo for substituted covt*].

(d) For variations, see No. iv.

(e) As to the covenant by trustees or mortgagees extending to the safe custody of the deeds, see p. 413, note.

III.

STATUTORY ACKNOWLEDGMENT *by a vendor to a purchaser (a)*
of the right to PRODUCTION of muniments, with UNDER-
TAKING for SAFE CUSTODY. VARIATIONS where vendors
are TRUSTEES or MORTGAGEES.

Acknow-
 ledgment
 of right to
 production.
 Under-
 taking for
 safe
 custody.

THE sd, *vendor*, hby acknowes the rt of the sd, *pchaser*, to the prodon of the docts mentd in the schdle hto (the posson of wch is retained (b) by the sd, *vendor*), & to delivery of copies thereof; AND hby (c) undertakes with the sd, *pchaser*, for the safe custody of the same docs.

IV.

STATUTORY ACKNOWLEDGMENT *of the right to PRODUCTION*
of SEVERAL SETS of deeds in the custody of different
persons, some being TRUSTEES or MORTGAGEES, with
undertaking for SAFE CUSTODY (d).

Acknow-
 ledgment
 of right to
 production.

Under-
 taking for
 safe
 custody (e).

THE sd A., as to the docs specified in the first schdle hto the posson of wch is retained by him, & the sd B., as to the docs specified in the second schdle hto the posson of wch is retained by him, & the sd C. & D. (*trustees or mtgees*), as to the docs specified in the third schdle hto the posson of wch is retained by them, hby resply acknowe the rt of the sd, *pchaser*, to the prodon of the docs specified in the sd schdles hto & to delivery of copies thof: AND the sd A., as to the docs in the sd first schdle, the sd B., as to the docs specified in the sd second schdle, hby resply undertake with the sd, *pchaser*, for the safe custody of the docs mentd in the first & second schdles.

(a) For several vendors or purchasers (whether joint tenants or tenants in common) no other alteration is necessary than the substitution of the plural.

(b) See p. 414, note.

(c) In the case of trustees or mortgagees or other fiduciary vendors, the undertaking for safe custody should be omitted.

(d) See above, pp. 413, 414.

(e) The undertaking for safe custody should not be given by C. & D.

COVENANTS FOR PRODUCTION OF DEEDS.

V.

ADDITION to express or statutory COVENANT FOR PRODUCTION where the deeds are to be DELIVERED to the purchaser as soon as the OTHER PROPERTY to which they relate has been sold.

AND FURTHER, cove by vendor with purchaser, that when all the other ppty to wch the sd munimts & writgs resp'y relate sh'l have been sold & conveyed to the purchaser or purchasers thof, such resp'ive munimts & writgs sh'l at the cost of the sd, purchaser, his hrs or assns, & upon his or their at his or their own cost extg & deliverg to such purchaser or resp'ive purchasers a pper acknowemt for the prodon & furnishg copies & for undertakg safe custody thof, be delivered to the sd, purchaser, his hrs or assns.

MISCELLANEOUS CLAUSES.

1. THE sd, purchaser, doth hby for himself & his assns (g), cove with the sd, vendor [vendors, & as a septe cove with each of them], that he, the sd, purchaser, his exs, ads, or assns, will henceforth durg the continue of the sd term pay the rent (h) reserved by & pform & observe the covts & agrmts

Covenant by purchaser to pay rent, and perform covenants of lease, with variations (f).

(f) The purchaser of a leasehold is bound to enter into this covenant if the vendor is under any continuing liability after the assignment, whether on a sale by the original lessee, or his representatives, or by an assignee who has entered into a similar covenant of indemnity, but not otherwise, e.g., on a sale by a trustee in bankruptcy, 1 Dart, V. & P. 629; but see above, p. 243, note (h). A trustee in bankruptcy, however, who is prevented from disclaiming the lease by a mortgagee, to whom he accordingly assigns it, is entitled to indemnity; *Ex parte Buxton, In re Müller*, 15 Ch. D. 289. Where part only of the demised premises is assigned at an apportioned rent, the covenant should be entered into with the vendor, "& his assns," and the words in note (h), and p. 420, notes (a), (b), and (c) will be inserted.

As to covenant to pay rent and perform covenants of lease

(g) The purchaser should expressly covenant for his "assigns" (*Doughty v. Bowman*, 11 Q. B. 444), as it is intended that the burden of the covenant should run with the land. As to the remedy of the original lessee against subsequent assignees in respect of breaches of covenant independently of contract, see *Moule v. Garrett*, L. R. 5 Ex. 132, L. R. 7 Ex. 101.

As to burden of covenant running with the land.

(h) "The yrly rent of £——, being the sd apportioned pt of the sd yrly rent of £——."

on the pt of the lessee & condons contd in the sd indre of lease (a), & will at all times keep the sd, *rendor*, his [*rendors*, their respive] hrs, exs, & ads [*if the vendors are the exs or ads of a deced lessee, add, & the este & effects of the sd X., deced*] (b) effectually indemnified agst all actions & pcdgs, costs, damages, expses, claims, & demands whatsr by reason or on acct of the non-paymt of the sd rent, or any pt thof, or the breach, non-pformce, or non-observe of the sd covts, agrmts, & condons or any of them (c).

The same
for several
leases by
two or
more pur-
chasers (d).

II. [*For jt tenants*, AND the sd, *pchasers*, do hby for themselves & their assns] [*for tenants in common*, AND each of them, the sd, *pchasers*, so as to be liable only in respt of one eql undivided — share of the sd premes, doth hby for himself & his assns] covt with the sd, *rendor*, that they, the sd, *pchasers*, their exs, ads, or assns, will henceforth, durg the continue of the sd respive terms, pay the respive rents reserved by, & pform & observe the covts & agrmts on the pt of the respive lessees & the condons contd in the sd respive indres of lease, & will at all times keep, &c., *as in last form, for indemnity in respt of*, “the sd respive rents” & “the sd respive covts, &c.”

(a) “AND henceforth to be pd, pformed, & observed in respt of such of the sd premes thby demised as are hby assned.”

(b) “AND such of the sd premes demised by the sd indre of lease as are retained by the sd, *rendor or vendors*.”

(c) “In respt of such of the premes demised by the sd indre of lease as are hby assned.”

(d) See notes to last form. Trustees purchasing leaseholds may have to enter into this covenant, which is somewhat onerous, as the obligation would remain after they have parted with the property. Occasionally the tenant for life is willing, though he cannot be required, to covenant for their indemnity, as follows :—

Covenant
by tenant
for life to
indemnify
trustees.

“THE sd, *tenant for life*, hby covts with the sd, *trees*, their exs & ads jtly & sevlly, that he, the sd, *tenant for life*, his hrs, exs, or ads, will at all times keep the sd, *trees*, resply & their respive hrs, exs, & ads effectually indemnified agst all actions, pcdgs, costs, damages, claims, & demands in respt of the psonal liability incurred by them under the covt hinfte contd for paymt of the rent under, & pformce & observe of the covts & condons of the sd lease.”

III. AND the sd, *pchaser*, doth hby covt with the sd, *vendor*, that he, the sd, *pchaser*, his hrs, exs, ads, or assns, will pay to the sd, *mtgee*, his exs, ads, or assns [on such paymt being lawfully demanded] (*f*) the sd ppal sum of £—— so owing on the secy of the sd recited indre of mtge as afsd, & the intt now & henceforth to become due in respt thof, & will at all times keep the sd, *vendor*, his hrs, exs, & ads, effectually indemnified agst the same & every pt thof, & all actions, pedgs, costs, chges, claims, & demands whatsr in respt thof; PROVD ALWAYS that if the sd, *vendor*, his hrs, exs, or ads shl be called upon to pay, & shl pay the sd ppal sum of £—— & intt or any pt thof respdy, the moy so paid by him or them, with intt thron at the rate, &c., from the time of paymt thof, shl be & the same is hby made a chge upon the sd hds & premes hby assured for the benefit of the pson or psons so paying the same.

Covenant by purchaser of equity of redemption to pay and indemnify the vendor against mortgage debt (*e*).

IV. THE sd, *vendor*, doth hby covt with the sd, *pchaser*, & his assns, that he the sd, *vendor*, his hrs, exs, or ads, will, when & as soon as any duty or duties shl become payable in respt of the premes hby assured upon the death of the sd A.,

Covenant by vendor for payment of death duties (*g*).

(*e*) As to the right of the vendor to indemnity, apart from contract, see *Waring v. Ward*, 7 Ves. 332, 337. As to the rights of the parties generally, in case of an assignment of an equity of redemption, see *Kinnaird v. Trollope*, 39 Ch. D. 636; 32 Solrs. J. 717.

(*f*) The object of the words in brackets is to preclude the vendor from requiring the purchaser to pay off the mortgage so long as he is kept indemnified; see 2 Dav. Prec. Pt. 1, 453, note (*d*). This may, if preferred, be effected by adding the following at the end of the covenant:—

“PROVD always that the sd, *vendor*, his hrs, exs, or ads, shl not be entled to require the sd ppal sum & intt, or any pt thof to be pd off, in case & so long as he & they shl be kept indemnified in respt thof as afsd.”

Vendor not to require payment of debt if indemnified.

(*g*) Where the purchase is of the fee simple in possession the vendor has, as between himself and the purchaser, to pay all succession duty which may become payable under any existing disposition, of the property, including the duty already accrued but payable only on the falling-in of beneficial leases subject to which the land was sold. *Re Kidd*, [1893] 1 Ch. 695; but where a reversionary interest is sold, the purchaser has, in the absence of special contract, to pay the succession duty arising on its falling into possession. *Cooper v. Trewby*, 28 Beav. 194: approved in *Re Langham*, 60 L. J. Ch. 110, 89 W. R. 156 (C. A.); *Hanson*, 332. A rateable part of the estate duty is charged on property not passing to the executor as such. (Finance Act, 1894, s. 9.) Probably on the sale of a reversion the purchaser has in the absence of special contract to pay the estate duty on its falling into possession.

Succession duty.

Estate duty.

pay & dischge the same, & will at all times keep the sd, *pchaser*, his hrs, exs, ads, & assns, effectually indemnified, &c., *as in last form*.

Covenant
by pur-
chaser to
pay death
duties in
respect of
reversion
(a).

V. THE sd, *pchaser*, doth hby covt with the sd, *rendor*, that he the sd, *pchaser*, his hrs [*or*, exs, ads] or assns, will when & as soon as any duty or duties shl become payable in respt of the premes hby assured upon the death of the sd, *tenant for life*, pay & dischge the same, & will at all times keep the sd, *rendor*, his hrs, exs, & ads, effectually indemnified, &c, *as in form III*.

Covenant
by pur-
chaser to
indemnify
vendor
against
restrictive
covenants
in former
convey-
ance (b).

VI. THE sd, *pchaser*, doth hby covt with the sd, *rendor* [& his assns (c)], that he the sd, *pchaser*, his hrs [*or*, exs, ads] & assns, will at all times hrafter duly observe & pform the covts by the sd, *rendor*, & restrictive provons in the sd indre of, &c., contd in relon to the premes hby assured, & will at all times keep the sd, *rendor*, his hrs, exs, & ads, effectually indemnified agst all actions, &c., *see form III*. in respt of the sd covts & restrictive provons or any of them.

Covenant
by pur-
chaser to
pay and
indemnify
vendor
against
rent-
charge.

VII. THE sd, *pchaser*, doth hby covt with the sd, *rendor*, & his assns, that he the sd, *pchaser*, his hrs & assns, will henceforth pay the sd rentchge of £——, reserved by the sd indre of, &c., & pform & observe all the covts on the pt of the sd, *rendors*, & condons in the same indre contd in respt of the hds hby assured, & will at all times keep the sd, *rendor*, his hrs, exs, ads, & assns effectually indemnified agst all actions, pcdgs, costs, damages, expses, claims, & demands whatsr in respt of the same rent-chge, covts, & condons.

Covenant
by pur-
chaser to
pay debts,
on assign-
ment of
business.

VIII. THE sd, *pchaser*, doth hby covt with the sd, *rendor*, that he the sd, *pchaser*, his exs or ads, will in due course pay & dischge all the debts & liabilities of the sd business wch were subsistg on the —— day of ——, 18——, or have since been incurred as appearg in the books of the sd business & wch now remain outstandg or undischgd, & will at all times

See now the provisions of the Customs, &c. Act, 1889 (52 Vict. c. 7), ss. 12–14, for the relief of purchasers in respect of unpaid succession duty, which are made applicable to estate duty by the Finance Act, 1894, s. 8 (2).

(a) See last note.

(b) As to vendor's rights apart from contract, see 1 Dart, V. & P. 631.

(c) The words in this bracket will be inserted if the vendor has other property subject to the restrictive covenants for the protection of which the covenant is inserted.

hrafter effectually keep indemnified the sd, *vendor*, his hrs, exs, & ads, agst all such debts & liabilities as afsd, & all actions, pcdgs, costs, damages, & expses in respt thof.

IX. THAT notwng anything by him the sd, *vendor*, done, omitted, or knowingly suffered the sd policy is now a valid subsistg policy for the sd sum of £—— & for all bonuses & addons, if any, wch have been added thto.

Covenant
that life
policy is
subsisting.

X. THAT he, the sd, *vendor*, will at any time hrafter [durg the jt lives of himself & K.], at the reqt & at the expse of the sd, *pchaser*, his exs, ads, or assns, appear at any life assurge office or offices in London or Westminster, or bfe the agent or agents of any such office or offices in the coy where he, the sd, *vendor*, may happen to be resident & actually be, & then & there truly answer such questions & make such declons as shl or may be asked or required touchg or concerng his age & state of health, & do all other necy acts in order to enable the sd, *pchaser*, his exs, ads, or assns, at his or their expse, to effect a policy or policies of assurge on the life of him, the sd, *vendor*.

To enable
purchaser
to insure
vendor's
life.

XI. THAT he, the sd, *vendor*, will not at any time do or knowgly omit or suffer anything [other than the omission to pay the premiums, wch are to be pd by the sd, *pchaser*, his exs, ads, or assns], whby the sd policy [any policy wch may be effected as hinbfe provd] may become void or voidable, or whby the sd, *pchaser*, his exs, ads, or assns, may be prevented from receivg the moys thby assured, or any bonus or addon thto or any pt thof respky.

Not to
vitate
policy.
Variation
where the
policy is
not yet
effected.

XII. THAT if the sd, *vendor*, shl at any time do or knowgly omit or suffer anything whby any addonal premium or paymt shl become payable in respt of the sd policy, then he, the sd, *vendor*, will from time to time thrafter pay to the sd, *pchaser*, his exs, ads, or assns, such sum or sums of moy as shl become payable as an addonal premium or paymt for keepg the sd policy on foot, one week at least bfe the first day on wch such addonal premium or paymt shl become payable to the assurge office in respt of such policy.

To pay
increased
premiums
if required.

XIII. THAT he, the sd, *vendor*, will from time to time give to the sd, *pchaser*, his exs, ads, or assns, at least —— days, notice in writg of his inton to do, omit, or suffer anything whby such addonal premium or paymt as afsd will become

To give
certain
notices.

payable, or to change his abode, & will forthwith, on being required so to do, give to him or them such informon as to his abode or intd change of abode as may be required, & that the exs or ads of the sd, *vendor*, shl within ——— days after his death send informon thof to the sd, *pchaser*, his exs, ads, or assns, by lre sent through the post addressed to him or them at his or their usual or last known place of abode in England.

Commence-
ment of re-
strictive
covenants
by pur-
chaser as
to building
or other
matters (a).

XIV. THE sd, *pchaser*, doth hby, for himself & his assns [The sd, *pchasers*, do hby, for themselves & their assns jtly, & each of them doth for himself & his assns septely (b)], covt with the sd, *vendor*, his [*vendors*, their] hrs & assns, the owner or owners for the time being of the lands coloured ——— on the sd plan hrunto annexed (c), [& as a septe covt with each of them, the sd, *vendors*, his hrs & assns] in mner follg, that, &c., see CONDONS OF SALE, p. 285 *et seq.*, or, “that the sd, *pchaser*, his [*pchasers*, their respive] hrs & assns, will at all times hrafter observe & pform the stipulons & regulons in relon to the sd lands & premes hby assured wch are contd in the schdle hto.”

Purchaser
to give
notice of
covenants
(d).

XV. THAT for the ppose of makg the covts of the sd A. [& B. resp]ly] hinfte contd to run with & bind the sd hds &

(a) See the forms of restrictive stipulations in CONDITIONS OF Sale, pp. 285 *et seq.*

(b) Some practitioners add, “& to the intent & so as to bind not only himself [themselves] psonally but also (so far as practicable) all psons claimg title under him [them resp]ly to,” or, “all future owners & tenants of, the lands & premes hby assured or any pt thof, & to bind such lands & premes into whosoever hands the same may come.” If it is wished to exclude or limit the personal liability of the purchaser or purchasers, the following may be substituted for it:—

Clause
limiting
personal
liability of
purchaser.

“To the intent & so that the covts hinafter contd shl be bindg on the sd lands & premes hby assured, into whosoever hands the same may come, but not so as to be psonally liable in damages for any breach thof after he, the sd, *pchaser* [they, the sd, *pchasers*, resp]ly] shl have parted with the premes.”

As to how far restrictive covenants can be made binding on the assigns of the covenantor, see p. 306, note.

(c) See p. 286, note.

(d) Notice of the covenants should if possible be endorsed on one or more of the covenantor's title deeds; see p. 46, note.

premes, the sd A., his hrs & assns, [the sd A. & B., respdy, & their respive hrs & assns] will upon every convce, lease, or other assurse of the premes or any pt thof, give to the pchaser, lessee, or grtee express notice of such covts.

xvi. Provd always, & these psnts are exted on this express condon, that if the sd, *pchaser*, his hrs or assns, shl at any time durg the lives or life of the pties hto, or, "of Her Majesty the Queen & her descendants now livg," or of the survors or survivor of them or within twenty-one yrs after the dece of the last survivor of them make default in paymt of the sd yrly rent of £—— within thirty days after the same shl have become due (whether demanded or not), or shl at any time within the sd period of lives in being & 21 yrs after make default in pformg or observg any of the covts & stipulons (whether negative or affirmative) hinfte contd & on his or their pt to be pformed & observed, then, & in such case, it shl be lful for the sd, *vendor*, his hrs or assns within the sd period of lives in being & 21 yrs after, into & upon the premes hby assured, or any pt thof, in the name of the whole, to enter & to do thron any act wch may be requisite specifically to pform the covts by the sd, *pchaser*, hinfte contd, [includg the pullg down of houses, bldgs, or other erections], & to remain in posson & rece the rents & profits thof until all the sd covts & stipulons shl have been duly pformed & observed, & any breach thof made good, & until the sd, *pchaser*, his hrs or assns, shl have pd to the sd, *vendor*, his hrs or assns, all rent in arrear & all costs, chges, & expses pperly incurred by him or them in or about the doing of any such act as afsd, or occasd by any such non-paymt or breach of covt as afsd, togr with intt thron at the rate of £5 p.c. p.a., or until the same shl have been satisfied out of the rents & profits of the premes: Provd NEVS that such rt of entry & other powers & remedies afsd shl not be exercised or put into force by the sd, *vendor*, his hrs or assns, unless & until he or they shl have given to the sd, *pchaser*, his hrs or assns, or left upon the premes hby assured, notice in writg to make good such default, & all costs, damages, & expses incurred as afsd,

Power of re-entry in conveyance in fee on non-payment of rent-charge or breach of covenants (c).

Proviso.

(e) See above, p. 305, note, and especially p. 306, as to restricting the power to lives in being and 21 years after.

& the sd, *pchaser*, his hrs or assns, shl fail so to do for one calr month after such notice.

Power of attorney in assignment of chose in action (a).

XVII. TOGR with power for the sd, *pchaser*, his exs, ads, or assns, at his or their own costs, in the name or names, & as the atty or attys of the sd, *rendor*, his exs, or ads, or orwise, to demand, sue for, recover, & rece & give effectual rects & dischges for the sd — & premes hby assned, or any pt or pts thof, & for any of such pposes to appt, a substitute or substitutes, the sd, *rendor*, his exs & ads being kept indemnified by the sd, *pchaser*, his exs, ads, or assns, from all costs & expses occasd by such use of his or their name or names.

PRECEDENTS (b).

I.

PREC. I. CONVEYANCE of FREEHOLDS by a *rendor* seised in FEE to a *purchaser*, with RECITALS (c).

THIS INDRE, made the — day of — betn A., *rendor*, of, &c., of the one pt, & B., *pchaser*, of, &c., of the other pt:
 Recitals. WHAS the sd A. is seised of the hds hinafter assured for an

(a) See above, p. 111, note.

As to use of statutory forms of conveyance.

(b) The Conv. Act, 1881, contains two schedules of forms of deeds, one (schedule 3) of mortgages, transfers, and reconveyances, having a special statutory operation; the other (schedule 4) being merely sample forms which are made sufficient in form and expression (s. 57), but in no way obligatory, save as regards the special wording required to imply the statutory covenants for title, &c., and production of deeds (see p. 401, and p. 413, note). Although deeds are much shortened by omitting the covenants for title and other common clauses which are supplied by the Act, there is little to be gained in point of brevity by adopting the language of the statutory forms in minor respects; and the customary language with some abbreviations is for the most part retained in these precedents.

As to omitting recitals.

(c) It is usual in this case, and it is not uncommon in less simple cases, to dispense with recitals; see the next precedent and other instances *infra*; but recitals are sometimes inserted, with the object of securing prospectively the benefit of their becoming evidence in support of the title under the V. & P. Act, 1874, s. 2, or otherwise; see p. 349, note.

este in fee simple in posson free from incumbees, & has agrd with the sd B. for the sale thof to him for the sum of £—— (d). NOW THIS INDRE WITNETH that in psuance of the sd recited agrmt, & in conson of the sum of £—— now (e) pd by the sd B. to the sd A. (the rect whof is hby acknowledged), the sd A., as benefl owner (f) doth hby grt (g) unto the sd B., *pcels, see p. 377 et seq., referrg, if need be, to a schdle or plan, or both* (h), To HOLD the same UNTO & TO THE USE of the sd B., his hrs & assns (i), subjt to an indre of lease dated,

PRINC. I.

Seisin.

Witnes-
seth.

Grant.

(d) The introductory recital as to muniments is very often dispensed with; if inserted it will be in the form following:—“AND WHAS the docs of title mentd in the schdle hto, wch are in the posson of the sd A., relate as well to the hds hby assured as to other ppty of the sd A., & it has been agrd that he shl retain the said docs & give such acknowemt & undertakg in relon thto as is hinafter contd.”

As to mu-
niments.

(e) It is unnecessary to notice that part of the money was paid, if it was so, as a deposit on the contract.

(f) The words “as benefl owner” are inserted to raise the implied statutory covenants for title by the person conveying in that capacity; see p. 398 *et seq.* It is assumed in all the precedents that the statutory covenants by beneficial owners for title, and by fiduciary owners against incumbrances, will be relied on in all cases to which they are applicable. For the forms of express covenants for title, see p. 402 *et seq.*, and for the forms of covenants against incumbrances by fiduciary owners, see p. 406. The express covenants if inserted would be placed at or near the end of the deed; the special statutory words “as benefl owner” or “as tree” &c. (see p. 398 *et seq.*) being in that case of course omitted. The special words in question are printed throughout these precedents in distinctive type, so as to avoid the necessity, except in special cases, for calling attention to them by a note.

As to
implied
statutory
covenants
for title.

(g) The word “convey” may be used in lieu of “grt,” being now equally appropriate (see above, p. 401), and being used in the forms in the schedules to the Conv. Act, 1881.

(h) The general words, and “the all estate” clause, are omitted, in reliance on the Conv. Act, 1881, ss. 6 and 63; see p. 391, notes (c) and (d).

(i) As to the use of the words “in fee simple” in lieu of “hrs & assns,” for limiting an estate in fee, see the Conv. Act, 1881, s. 51, and the forms in the schedule to the Act; and above, p. 393, note.

It is occasionally the wish of a purchaser whose wife is sufficiently provided for by settlement or otherwise, to exclude her from dower in the event of his dying intestate, by the insertion of the following clause; but having regard to the Dower Act, 3 & 4 Will. IV. c. 105, such a clause should not be inserted unless there is special reason:—

As to
inserting
declaration
against
dower.

“AND the sd, *pchaser*, doth hby declare that any wife whom

PRINC. I.
 Acknowledgment,
 &c., as to
 muniments.

&c., & made, &c., whby the premes were demised to, &c., for a term of — yrs, at the yrly rent of £—— (a): [And the sd A. hby acknowes the rt of the sd B. to prodon & delivery of copies of the docs of title the posson of wch is retained by him, the sd A., wch are mentd in the [second] schdle hto, & hby undertakes with him for the safe custody of such docs (b)]: In wits whof the sd pties hto have hrunto set their respive hands & seals the day & yr first above written (c).

[The first schdle above refd to.]

[Schdle of pcels.]

[The second schdle above refd to.]

[Schdle of munimts.]

Signed, sealed, & delivered }
 by the within [above] named }
 A. in the presce of —.

[Rect endorsed or appended.]

[Reced the day & yr first within [above] written of the within [above] named B. the sum of — pounds, being the conson moy within [above] expd to have been pd by him to me.

(Signed) A.] (d).

he may leave survivg him, shl not be entled to dower out of the sd hds & premes hby conveyed."

(a) For other forms referring to the tenancies, see pp. 393 *et seq.* If the parcels are contained in a schedule, the tenancies may conveniently be given in a separate column of the schedule, in which case say here:—"subjt to the leases & tenancies mentd in the schdle hto."

As to
 statutory
 acknow-
 ledgment.

(b) See p. 413, note. It is assumed in these precedents that the statutory acknowledgment, &c., will be used whenever the case admits of it, both in the case of beneficial owners, and trustees and mortgagees. For the full form of express covenant for production by a beneficial owner, see p. 413; and for the form for trustees and mortgagees, see p. 417.

Execution.

(c) As to the rights of the purchaser with respect to the execution of the conveyance, see the Conv. Act, 1881, s. 8; and as to execution by attorney, see s. 46.

As to
 endorsed
 receipt.

(d) The endorsed receipt is now only used in special cases; *e.g.*, in the case of a company or public body, whose custom it is to have a special form of receipt signed by their authorised agent; see the Conv. Act, 1881, ss. 54, 55; above, p. 357, note. As to the payment of the purchase-money to the

II.

CONVEYANCE of FREEHOLDS by a vendor seised in FEE to a purchaser. SHORT form WITHOUT RECITALS (e). PREC. II.

PARTIES, A., of, &c. (hinafter called the vendor), 1. B., of, &c. (hinafter called the purchaser), 2. WITNETH that in Parties.
Witnesseth.

vendor's solicitors, see the same Act, s. 56, and the Trustee Act, 1893, repealing and by section 17 replacing, with additions, the Trustee Act, 1888, s. 2; above, page 375, note.

As to the stamp, see Stamp Act, 1891, Schedule tit. "CONVEYANCE OR TRANSFER ON SALE;" and above, p. 317, note. Stamp.

As to the various searches and enquiries to be made against a vendor, see now the Land Charges and Searches Act, 1888 (51 & 52 Vict. c. 51), and Rules of 1st January, 1889; Elph. & C. on Searches, and Supplement; 1 Dart, V. & P. Ch. xi. p. 516 *et seq.*; Wolstenholme, C. A., p. 182. The practical result appears to be that in ordinary cases the following searches are sufficient in the case of freeholds, that is to say, searches for judgments, only in case a person searched against is of such an age that a judgment could have been obtained against him before the 24th July, 1860; searches for executions at the suit of a subject at the Land Registry; searches for five years for Crown debts; searches for Crown executions as from 1st November, 1865; searches for *lis pendens* for five years, and for annuities registered under 18 & 19 Vict. c. 15, s. 12, as from 26 April, 1855, or from the later day on which the person against whom the search is made became entitled to the property, whether in possession or not, or attained 21, whichever last happened, at the Central Office. Searches.

Practical result.
Judgments.
Executions.
Crown debts.
Crown executions.
Lis pendens.
Annuities.

Searches for bankruptcies ought also to be made, but they are necessarily imperfect, as there appears to be no statutory provisions for registration of receiving orders or adjudications, and although a register is kept at the Court of Bankruptcy, both of town and country bankruptcies, the latter is not kept up to date; the search is usually made for five years only, unless there are suspicious circumstances, in which case it ought to be made for 12 years. Bankruptcies.

Searches for deeds of arrangement and land charges must be made at the Land Registry Office. The searches for land charges are necessarily imperfect, as the charges created before 1888 do not require registration at the Land Registry Office. Some of these may possibly be discovered by search at the Board of Agriculture (3, St. James's Square). Deeds of arrangement.
Lands charges.

If the land is in Middlesex or Yorkshire, the local registry should be searched; and as to lands in Middlesex, the register kept at the Land Transfer Office. See the Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 127. The practice is only to make searches as from the last purchase or mortgage, but some practitioners direct searches in Middlesex and Yorkshire to be made for 20 years. Local registries.

Searches for enrolled deeds may sometimes be necessary. Enrolled deeds.

Official searches as to matters entered (*i.e.*, not including enrolments) at the Central Office may be made under the Conv. Act, 1882, s. 2; and as to Official searches.

(e) See notes to last precedent.

PREC. II. conson of the sum of £—— pd by the pchaser to the vendor
Grant. (the rect whof is hby acknowledged), the vendor, as benefl owner,
Habendum. hby grts to the pchaser, *pcels*, see p. 377 *et seq.* To HOLD UNTO
 & to the use of the pchaser, his hrs & assns [*Acknowemt &*
undertakg as to munimts, see last precedent.] IN WITS, &c.

executions and land charges at the Land Registry Office, under the Land Charges, &c. Act, 1888 (51 & 52 Vict. c. 51), s. 17. Official searches may be made in the Yorkshire register, see the Yorkshire Registries Act (47 & 48 Vict. c. 54), s. 20.

Index map. The index map at the Land Registry Office should also be inspected to ascertain that the title has not been registered.

Copyholds. The searches for copyholds are the same as for freeholds, save that searches in the Middlesex and Yorkshire registries, searches for Crown debts, and the inspection of the index map at the Land Registry Office are unnecessary. The Court rolls must be searched back to the last purchase for value, i.e., to the admission and the surrender on which it is founded.

Leaseholds. The searches for leaseholds are the same as in the case of freeholds, except Crown debts. Searches need not be made as to leaseholds not exceeding 21 years at rack-rent in Middlesex; Middlesex Registry Act (7 Anne, c. 20), s. 17, nor as to any lease at rack-rent, or as to any lease not exceeding 21 years where the actual possession and occupation goes with the lease, before 1885. See 2 & 3 Anne, c. 4, s. 16; 6 Anne, c. 35, s. 29; and 8 Geo. II. c. 6, s. 34; nor to any lease under 21 years where accompanied by actual possession after 1884, Yorkshire Registries Act, 1884 (47 & 48 Vict. c. 54), s. 28.

Trustees. The only searches to be made against trustees are for *lis pendens*, and in the local registries, and for copyholds in the Court rolls.

Mortgagee. The searches to be made against a mortgagee are for *lis pendens*, bankruptcies, in the local registries, and for copyholds in the Court rolls.

If the premises are situate in London, searches should be made in appropriate cases at the County Hall for orders made to enforce the payment of the expenses incurred by the council in respect of dangerous or neglected structures. See the London Building Act, 1894 (57 & 58 Vict. c. ccxiii.), s. 116, by which Act the Metropolitan Building Act, 1882 (which contained in s. 18 somewhat similar provisions), was repealed. It may perhaps be doubted whether charges of this nature affect a purchaser if they are not registered under the Land Charges, &c. Act, 1888 (51 & 52 Vict. c. 51).

Death duties. It should be remembered that a mere receipt for estate duty under the Finance Act is not sufficient for the protection of a purchaser, who should require a certificate of discharge under s. 11.

It is by no means clear that a purchaser who within a short time after a death occurring after the 2nd of August, 1894, causing an absolute succession gives more for the land than the amount mentioned as its value in the assessment will be protected if the assessment is incorrect, 40 Sol. J. 151, unless such incorrectness arises from fraud or failure on the part of the person accountable for the estate duty to disclose material facts, in which case a purchaser without notice is protected by s. 11 (4).

III.

CONVEYANCE of FREEHOLDS *by APPOINTMENT only under a power to a purchaser in FEE (a). VARIATION where RECITALS are OMITTED (b).* PREC. III.
—

PARTIES, A., vendor, 1 ; B., purchaser, 2. Recite conveyance to such uses as A. shd appt, settg out the power fully. Contract for sale, p. 370. [Recital as to muniments, p. 374.] NOW THIS INDRE WITNEETH that in pursuance of the sd recited agrmt, & in conson, &c. (the rect, &c.), see Precedent I., the sd A., as benef owner, in exercise of the power given to him by the hinfte recited indre, & of every other power enablg him in this behalf, doth hby appt that, ALL, &c., pcls, p. 377 et seq. (c), shd, subj, &c., to leases & tenancies, henceforth be & remain To the USE of the sd B., his hrs & assns. [Acknowledmt & undertakg by A., as to muniments, p. 418]. IN WITS, &c. (d). Appoint-
ment.

IV.

CONVEYANCE of FREEHOLDS *by APPOINTMENT under a power and by GRANT. VARIATION where RECITALS are OMITTED, and where the conveyance is to USES.* PREC. IV.
—

PARTIES, A., vendor, 1 ; B., purchaser, 2. Recite conveyance to uses to bar dower in favour of A., p. 350. Contract for sale, p. 370. NOW THIS INDRE WITNEETH that in pursuance of the sd Witnes-
seth.

(a) This is for a case where the vendor has no estate in default of appointment or otherwise. The vendor is sometimes made to convey by grant as well as appointment, in case he should by any means have acquired an estate as well as a power ; and where the conveyance is to uses, and an acknowledgment as to muniments is required, that mode should be adopted ; see p. 414, note. For the form see the next precedent, and note thereto.

(b) Recitals might be omitted, the reference in that case to the deed creating the power being to “an indre, dated &c., & made, &c.”

(c) The enactment in the Conv. Act, 1881, s. 63, making a conveyance include, “all the estate,” &c., of the vendor, applies to appointments ; see p. 391, note.

(d) As to the mode of executing a deed exercising a power, where special formalities are required by the power, see p. 73, note.

PREC. IV.
 Appoint-
 ment.
 Grant.
 Haben-
 dum.

recited agrmt & in conson, &c. (the rect, &c.), *see Precedent I.*, the sd A., as benefl owner (a), in exercise of the power given to him by the hinbfe recited indre (b) & of every other power enablg him in this behalf, doth hby appt (c), & by virtue of his este & intt, & by way of further assurse, doth hby grt & confirm unto the sd B., *pcels*, p. 377 *et seq.*, To HOLD the same premes UNTO & TO THE USE of the sd B., his hrs & assns, subj, &c., *to leases & tenancies*. [*Acknowemt & undertakg by A. as to munimts*, p. 418.] IN WITS, &c.

As to
 implied
 covenants
 in convey-
 ance to
 uses.

(a) See pp. 401 and 431, note. This precedent is adapted to the case (now seldom occurring) of the vendor being entitled to the old uses to bar dower. Where the conveyance is to uses (see the next note), and the vendor appoints as well as grants as beneficial owner, the implied covenants created by the grant will be with the grantee, and the benefit of the covenants will go with the estate through him to the *cestuis que use*; but as the appointment is made direct to the uses without the medium of the grantee, the covenants implied by the appointment will be with the *cestuis que use* direct. The express covenants if inserted would be with the grantee to uses.

Seisin.

(b) If recitals are omitted, say, "an indre dated, &c., & made, &c."

Variation
 for con-
 veyance to
 uses.

(c) If the conveyance is to any uses less simple than to the purchaser in fee, the appointment and grant must be by separate clauses in order that the seisin may not remain in the grantee to uses, the deed running from this point as follows:—

"That all & singr the hds hinafter descd & hby grted, shl (subj as hinafter mentd) henceforth remain & be to the uses, upon the trusts, & subj to the powers & provons hinafter decld & contd concerng the same: AND THIS INDRE ALSO WITNETH, that in further psuance of the sd agrmt, & for the conson afsd, the sd A., as benefl owner, doth hby grt & confirm unto the sd B., *pcels*, To HOLD the same premes unto the sd B. & his hrs, subj, &c., *to tenancies*, to the uses, upon the trusts, & subj to the powers & provons hinafter decld & contd, that is to say, &c."

As to the insertion of the statutory acknowledgment as to muniments in an appointment direct to uses, see p. 414, note.

V.

COVENANT to SURRENDER COPYHOLDS on a Sale (d). PREC. V.
 VARIATIONS where the Copyholds are held of SEVERAL
 MANORS (e).

PARTIES, A., *vendor*, 1; B., *pchaser*, 2. *WHAS* the sd A. is
 seised for an unincumbered este of inhance to him & his hrs Recitals.
 of the hds [first] hinafter descd & covted to be surrendered,
 at the will of the lord, accdg to the custom of the manor of
 — in the coy of — [& of the hds 2ndly, &c.] & has agrd
 with the sd B. for the sale of the sd hds & premes to him for
 the sum of £—. [*Recital as to munimts*, p. 374.] *NOW* Witnes-
 THIS INDRE WITNETH that in psuance, &c., & in conson, seth.
 &c. (the rect, &c.), *see Precedent I.*, the sd A., as benefl
 owner (f), doth hby covt with the sd B., his hrs & assns, that Covenant
 he, the sd A., or his hrs & all other necy pties, if any, will to sur-
 forthwith, at the cost of the sd B., his hrs or assns, surrender render.
 into the hands of the lord of the sd manor of —, in the coy
 of —, accdg to the custom thof [into the hands of the lords
 of the respive manors, of wch the same are resply holden as
 hinbfe is recited, accdg to the customs thof resply], *pcels*, p. 377
et seq. (g), to wch sd hds the sd A. was admitted out of ct, *or*,
 “at a ct holden for the sd manor,” on the — day of —,

(d) As to enfranchisement, see the Copyhold Act, 1894 (57 & 58 Vict. c. 46).
 As to splitting admittances, see *Johnstone v. Spencer*, 30 Ch. D. 581. As to
 Searches, see *ante*, p. 428, note (d).

(e) Sometimes the deed containing the covenants for title and production of As to
 muniments follows the surrender instead of preceding it as above, in which covenants
 case a recital of the surrender would be substituted for the covenant to for title
 surrender; but as the latter plan has no practical advantage over the and pro-
 former, and the statutory covenants for title could not in the latter case be duction on
 implied (see pp. 400 and 401), a form of such a deed is not given. *Recitals* covenant to
 might be dispensed with, the variations in the operative part for that case surrender.
 being sufficiently obvious.

(f) See above, p. 427, note (f); and as to implying the statutory covenants
 for title in the case of copyholds, see pp. 400 and 401.

(g) The enactments in the Conv. Act, 1881, ss. 6 and 63, implying the Omission
 general words and estate clause in conveyances, apply, by the express of general
 definition of “conveyance” in s. 2, to covenants to surrender copyholds; words and
 and as the word “conveyance” in the Act, though by s. 2 it *includes* all estate
 kinds of conveyances by *deed*, is not confined to them, those enactments also clause.
 apply to surrenders.

PREC. V. on the surrender of X., *or*, "as the hr of Y., deced," To THE
 To use of USE of the sd B., his hrs & assns for ever, to be holden of the
 purchaser. lord of the sd manor [lords of the respive manors of wch the
 same are resply holden] accdg to the custom thof [respby], by
 & under the rents, fines, heriots, suits, & services due & of rt
 accustomed for the same: AND THE sd A. doth hby declare
 Declaration of trust that in the meantime & until the sd hds & premes shl' have
 until sur- been surrendered psuant to the covt hinfte contd, he, the sd
 render. A., & his hrs (a) will stand seised thof in trust for the sd B.,
 his hrs & assns. [*Acknmt & undertakg as to munimts p. 418.*]
 IN WITS, &c. (b).

VI.

PREC. VI. SURRENDER of COPYHOLDS to a Purchaser. VARIATIONS
 where the Vendor's WIFE joins, and for a conveyance
 to two Purchasers as JOINT TENANTS or TENANTS IN
 COMMON.

Manor of —, in the } The — day of —.
 Coy of —.

Memoran-
 dum.

BE IT REMEMBERED that on the day above-mentd,
 A., of, &c., a copyhd tenant of the sd manor, [& B. his wife,]
 came bfe me, X., [deputy] steward of the sd manor, & [she,
 the sd B., havg been by me, the sd [deputy] steward, first
 examined septely & apart from her sd husbd, touchg her
 free & voluntary consent to the makg & passg the surrender

Vesting of
 trust estate
 in copy-
 holds.

(a) A trust estate in copyholds to which the trustee has been admitted vests in the customary heir or devisee, and not in the personal representatives, s. 30 of the Conv. Act, 1881, having been repealed as to that case by the Copyhold Act, 1894, repealing, and by s. 88 re-enacting, the Copyhold Act, 1887, s. 45. In *Re Mills' Trusts*, 37 Ch. D. 312 (re-argued, W. N., 1888, p. 155), it was held that if a sole trustee of copyholds had died between 31st December, 1881, and 16th September, 1887, the Copyhold Act, which was passed on the latter date, divested all trust estates from the personal representatives and vested them in the customary heir or devisee, subject to any disposition made by the personal representatives in the interim.

(b) The stamp will be on the surrender; see the Stamp Act, 1891, ss. 61, 65.

hinafter contd & freely & voluntarily consentg thto as by law required,] did out of Ct, & in conson of the sum of £—— to the sd A. pd by C., of, &c., [& D., of, &c.,] (the rect whof is hby acknowledged), surrender out of his [their & each of their] hands into the hands of the lord of the sd manor by the hands & acceptce of me, the sd [deputy] steward, by the rod accdg to the custom of the sd manor, *pcls*, To the use of the sd C., his [C. & D., their] hrs & assns for ever [as tenants in common in eql shares], at the will of the lord accdg to the custom of the sd manor, by & under the rents, fines, heriots, suits & services, due & of rt accustomed for the same.

PREC. VI.

Surrender.

To use of purchaser.

A.

B.

Taken [togr with the septe
examinon of the sd B.,] the
day & yr first above written
by me. } X., [Deputy] Steward.

Rect. for Conson Moy (c).

VII.

ASSIGNMENT of LEASEHOLDS *by the Lessee or Assignee* PREC. VII.
of the Lease to a Purchaser. VARIATION where Lessor's
LICENCE is required.

PARTIES, A., *rendor*, 1; B., *pchaser*, 2. *WHAS* by an indre of lease dated, &c., & made, &c., *pcls in full*, with the appurts thof were demised unto the sd A. [X.], his exs, ads, & assns, from the — day of —, for the term of — yrs, subjt to the paymt of the rent thby reserved, & the pformce & observe of the covts on the pt of the lessee & condons thrin contd [*assmnt of lease*, p. 358, *form xxxviii.*, or *devolon of title*, p. 359, *form xl.*] (d):

Recitals.

Lease.

(c) Sections 54 and 55 of the Conv. Act, 1881, only apply to deeds.

(d) As to Searches, see *ante*, p. 428, note (d). If the licence of the lessor is required to the assignment, the clause in the lease requiring his licence to an assignment will be recited. As to clauses of this nature, see the Conv. Act, 1892 (55 & 56 Vict. c. 13), s. 3, which prohibits the taking of a fine for the licence. As to forfeiture on an assignment without licence, see *Barrow v. Isaacs*, [1891] 1 Q. B. 417. If the licence of the lessor is required,

PREC. VII. AND WHAS the sd A. has agrd with the sd B. for the sale to him for the sum of £—— of the premes comprd in the sd indre of lease for the residue of the term thby grted as afsd, subjt to the rent reserved by & the covts & condons contd in the sd lease (a) : NOW THIS INDRE WITNETH that in psuance of the sd recited agrmt & in conson of the sum of £—— now pd by the sd B. to the sd A. (the rect whof is hby acknowed) the sd A., as benefl owner, doth hby assn unto the sd B., ALL & SINGR the [pces or pcels of land, messes, or tenemts] hds & premes comprd in & demised by the sd recited indre of lease, To HOLD the same unto the sd B., his exs, ads, & assns, henceforth for all the residue now unexpired of the sd term of — yrs grted by the sd indre of lease, subjt henceforth to the paymt of the rent, & pformce & observce of the covts on the pt of the lessee & condons by & in the same indre reserved

Witnesseth.

Assignment.
Parcels.
Habendum.

and he is made a party to the assignment (which is not usual), the following recital will be inserted in this place :—

Recital as to concurrence of lessor.

Proviso restricting licence.

“AND WHAS the sd, *lessor*, has agrd to concur in these psnts, for the ppose of givg his consent in mner hinafter appearg to the assnmt hby made,” and the assignment will be expressed to be made “with the consent (hby testified) of the sd, *lessor*,” and the following proviso should be added immediately after the habendum: “PROVD always that the licence hinfte given by the sd, *lessor*, shl not be deemed to authorise any further assnmt [or any underlettg] of the premes.” If the lessor gives licence by a separate instrument (for form of which, see LICENCES), the following recital of the fact may be inserted in this place: “AND WHAS the necy licence in writg of the landlord to the assnmt hby made has been duly obtained.” In either of the above cases if the property assigned is comprised in more than one lease, and licence is required for the assignment of the property comprised in one lease only, add in the recital, after the words “hby made,” the words “of the premes comprd in the sd indre of lease of, &c.”

Variation where no money passes.

(a) If the lease is at a rack rent and no money passes, say, “AND WHAS the sd A. has agrd with the sd B. for the assnmt to him of the premes, &c., &c., in conson of the covt of the sd B. hinafter contd.” The consideration will be similarly stated in the operative part.

If any of the muniments are retained add here introductory recital (if thought proper) as to muniments, see p. 374; and acknowledgment and undertaking after the habendum, see p. 418.

& contd (b); AND the sd B. doth hby for himself & his assns, covt with the sd A., that he the sd B., his exs, ads, or assns, will henceforth durg the continue of the sd term pay the rent reserved by & pform & observe the covts & agrmts on the pt of the lessee & condons contd in the sd indre of lease & will at all times keep the sd A., his hrs, exs, & ads, effectually indemnified agst all actions & pcdgs, costs, damages, expses, claims, & demands whatsr by reason of the non-paymt of the sd rent or any pt thof, or the breach, non-pformce or non-observe of the sd covts, agrmts, & condons, or any of them. IN WITS, &c.

PREC. VII.

Covenant of indemnity against rent and covenants (c).

VIII.

ASSIGNMENT of LEASEHOLDS *by the original LESSEE to a purchaser. CONCISE FORM by ENDORSEMENT on the Lease or by supplemental Deed, without Recitals.* VARIATION *where LESSOR joins to RELEASE Lessee from COVENANTS, and takes SUBSTITUTED covenants from ASSIGNEE (d).*

PREC. VIII.

PARTIES, the within-named A. (hinafter called the vendor), 1; B., of, &c. (hinafter called the pchaser), 2. WITNETH that in conson, &c. (the rect, &c.), the vendor, as benefl owner,

(b) And, if so, “& subjt to an indre of underlease dated, &c., & made, &c., whby the premes were demised to Y. of, &c., for the term of — yrs from the — day of — at the yrly rent of £—.”

Variation, subject to underlease.

(c) As to the cases in which this covenant is required, see p. 419, note; and for variations therein, see the form at p. 420.

(d) See the last precedent and notes thereto. If the deed is supplemental instead of endorsed, add after the parties, “supplemental to an indre of lease dated, &c., & made, &c. (hinafter refd to as the sd lease);” and make the necessary substitutions for the expressions “within named,” “within written,” &c., which are appropriate only to an indorsed deed.

Variation for supplemental deed.

Occasionally the lessor is willing to release the original lessee from the covenants of the lease, on having a substituted covenant from the assignee; in that case the lessor will be added as a party of the second part, and the

PRINC. VIII.

Assign-
ment.

Parcels.

Haben-
dum.Covenant
of indem-
nity.

doth hereby assign unto the purchaser, ALL the premises demised by the within-written indenture of lease, To hold to the purchaser, his executors, administrators, & assigns, for the residue of the term of — years granted by the said lease, subject to the rent, covenants, & conditions of the said lease: AND the purchaser hereby covenants with the vendor to keep him & his executors & administrators at all times indemnified against such rent, covenants & conditions, & all claims, proceedings, costs, & expenses in respect thereof. IN WITNESS, &c.

IX.

PRINC. IX.

CONVEYANCE of FREEHOLDS and LEASEHOLDS by
TRUSTEES for SALE and EXECUTORS under a will (a).
RESERVATION of a RIGHT of WAY to the VENDORS.

Recitals.

PARTIES, A. & B., trustees & executors, 1; C., purchaser, 2. Recite lease, p. 357; & devolution of title to testator, p. 359, saying, "became absolutely vested," &c., &c.; will of X., setting forth

following will be added at the end of the deed in place of the covenant of indemnity:—

Variation
where
lessor
releases
original
lessee from
covenants,
the assignee
entering
into a sub-
stituted
covenant.

"AND THIS INDENTURE ALSO WITNESSETH that in consonance of the covenant of the said B., purchaser, hereinafter contained & of the premises, the said X., lessor, doth hereby release the said A., his heirs, executors, & administrators, from all & singler the covenants & agreements on the part of the said A. in the said indenture of lease contained & all liability thereunder, & all actions, proceedings, claims, & demands in respect of any breach of any such covenants heretofore or hereafter committed or happening: PROVIDED ALWAYS that the release hereinbefore contained shall not affect the said covenants & agreements so far as the same are real covenants & agreements binding on the said demised premises, & the persons from time to time possessed thereof, but only so far as regards the personal liability of the said A., his heirs, executors & administrators, thereunder: PROVIDED ALSO that the said release or anything herein contained shall not prejudice or affect the right of the said X., his executors, administrators & assigns, to re-enter upon the said demised premises for non-payment of the rent reserved by or the breach of any of the covenants, agreements, or conditions contained in the said lease: [Add covenant by assignee with lessor to pay rent & perform covenants, & power of re-entry on breach of covenant, as in a lease mutatis mutandis. See LEASES.]

Effect of
Settled

(a) By the Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 63, where land

genl devise & bequest in trust for sale & conversion, & rect clause (if any) & apptmt of exors: death & probate: & testor's seisin of freehd, p. 362, *mutatis mutandis*; AND WHAS the sd A. & B., as trees of the sd will & in psuance of the trust for sale thrin contd as afsd, have agrd with the sd C. for the sale to him of the sd freehd hds & premes subjt to such reservon as is

PREC. IX.

is held in trust for sale, if the proceeds of sale and the rents until sale, or any share thereof are settled in trust for a tenant for life or other limited owner as there defined, the powers of sale and other powers of the Act were vested in him; and although, by s. 56, the power of the trustees to sell was kept alive, the consent of the tenant for life or limited owner was made necessary to its exercise; but this having been productive of great inconvenience in practice, was altered by the Settled Land Act, 1884 (47 & 48 Vict. c. 18), s. 7, by which (sub-s. i.) the powers conferred by s. 63 of the Act of 1882, on the tenant for life or other beneficial owner, are not to be exercised without an order of Court; so that until such an order has been obtained, the trust for sale remains unaffected, and any consent not required by the settlement is not by force of anything contained in the S. L. A. 1882, to be deemed necessary to enable the trustees to execute the trusts and powers created by the settlement, S. L. A., 1884, s. 6 (1). On the other hand, if such an order has been obtained, the powers of the trustees are thereby suspended (see sub-s. iv.), but with a protection to persons dealing with them unless the order is registered as a *lis pendens* (sub-s. vi.). See note on the Acts, *infra*, p. 456 *et seq.*

Land Act, 1882, s. 63, as to trusts for sale,

as modified by the Act of 1884, s. 7.

If the sale is for payment of debts or legacies under a charge in the will, s. 63 of the Act of 1882 would not apply, and the power of executors to sell for payment of debts would also of course be paramount. It should be observed that the rule laid down in *Re Tanqueray-Willaume and Landau*, 20 Ch. D. 465, that where executors are selling real estate charged with debts after 20 years from the testator's death, a presumption arises that the debts have been paid, and a purchaser is therefore put on inquiry, does not in general apply to executors selling leaseholds under their common law power, unless the purchaser has notice that the bequest has been assented to: *Re Whistler*, 35 Ch. D. 561; see generally as to sales for payment of debts, 2 Dav. Prec., Pt. 2, pp. 468 *et seq.*, note.

As to sales for payment of debts or legacies.

As to whether a married woman trustee for sale can convey and give a discharge for the purchase-money as a *feme sole* without the concurrence of her husband, see p. 229.

Married woman trustee.

That a trust for sale, whether peremptory or discretionary, remains in force although all the beneficiaries have become absolutely entitled in possession and are *sui juris*, until they all concur in putting an end to it by electing to take the property unconverted, see 1 White & Tudor, L. C. Eq., p. 993; *Biggs v. Peacock*, 22 Ch. D. 284; *Re Tweedie*, 27 Ch. D. 315; 32 Sol. J. 729.

Trust for sale, when spent.

As to the power of the representatives of the last surviving trustee to sell under a trust for sale, see *Re Morton*, 15 Ch. D. 143; *Re Cunningham*, [1891] 2 Ch. 567, above p. 101; the Conv. Act, 1881, s. 80; Lewin, Trusts, p. 245.

Sale by representatives of last trustee.

For a form where the tenant for life joins to consent and covenant for the title, see *infra*.

PREC. IX. **—** hinafter contd, for the sum of £——, & as exors of the sd will (a) have agrd with the sd C. for the sale to him of the sd leasehd hds & premes for the sum of £—— : NOW THIS INDRE WITNETH that, in psuance, &c., & in conson, &c., *the pchase-moy for freehds* (b) (the rect, &c.), the sd A. & B., as such trees as afsd, do resply hby grt unto the sd C., *pcels*, p. 377 *et seq.* ; *reservon of rt of way*, p. 390 ; *habendum to C.*, *in fee*, p. 393. AND THIS INDRE ALSO WITNETH that in psuance, &c., & in conson, &c., *the pchase-moy for the leasehds* (the rect, &c.), the sd A. & B. as psonal repves of the sd X., do resply hby assn unto the sd C., *leasehd pcels by referce to lease*, p. 381 ; *habendum to C.*, *subjt to rent & covts*, p. 396 ; [*acknmt by A. & B. as to munimts*, p. 418] ; *cort by C. to indemnify A. & B. & este of X. agst rent & covts of lease*, p. 419. IN WITS, &c.

X.

PREC. X.

CONVEYANCE of FREEHOLDS by MORTGAGOR and MORTGAGEE to a purchaser. VARIATIONS *where there have been a TRANSFER and FURTHER CHARGE, and other dealings with the mortgage ; also where PART of the PURCHASE-MONEY is paid to the MORTGAGEE, in part discharge of the mortgage debt, and where the WHOLE of the PURCHASE-MONEY is paid to the MORTGAGOR. Also where CONCISE RECITALS are inserted* (c).

Recitals. PARTIES, A., *mtgor*, 1 ; B., *mtgee*, 2 ; C., *pchaser*, 3. WHAS by an indre dated, &c., & made, &c., in conson of the sum of

Sale of leaseholds by trustees or executors. (a) Although the leaseholds are comprised in the bequest in trust for sale, the sale of the leaseholds should be made by the executors in that character, unless it appears that they have assented to the bequest ; but if they sell under the trust for sale, that would, of course, amount to an assent. If they sell as executors, the bequest to them in trust for sale is of course immaterial, and need not be recited as far as the leaseholds are concerned.

(b) The purchase-money is kept distinct, as the freeholds and leaseholds are sold by the vendors in different characters.

Discharge of equitable mortgages. (c) If the mortgage is equitable only, it may and should (in order to keep it off the title) be discharged by a simple receipt on the deed or memorandum of charge, and the property conveyed as unincumbered ; see 2 Dav. Prec., part 2, pp. 277, 821.

As to notice That a first mortgagee with notice of a second mortgage, who concurs

£—— pd by the sd B. to the sd A., the hds hby assured, were conveyed & assured by the sd A. unto & to the use of the sd B., his hrs & assns, by way of mtge, for securg the paymt to the sd B., his exs, ads, or assns, of the sd sum of £—— with intt for the same as thrin expd (d): AND WHAS the sd sum of £—— still remains owing to the sd B., on the secy of the sd indre of, &c., but all intt thron has been pd up to the date of these psnts (e): AND WHAS the sd A. has agrd with the sd C. for the sale to him for the sum of £—— of the hds hby assured in fee simple in posson, free from incumbces: AND WHAS it has been agrd that the sd sum of £—— shl be pd to the sd B. out of the sd pchase-moy, & that he shl join in these psnts in mner hinafter appearg (f): NOW THIS INDRE WITNETH that in psuance of the sd recited agrmt & in conson (f) of the sum of £—— now pd by the sd C., at the

PREC. X.
Mortgage
in fee.

Contract
for sale.

Agreement
of mort-
gagee to
join.

Witnes-
seth.
Considera-
tion.

with the mortgagor in selling the property, and allows him to receive the balance of the purchase-money, is liable to the second mortgagee to the extent of such balance, see *West London Commercial Bank v. Reliance, &c., Building Society*, 29 Ch. D. 954.

of second
mortgage.

(d) If required, recite transfer and further charge, p. 354.

(e) Instead of the recitals in the text to this point, the following may be substituted, if it is desired to avoid detailed recitals of the dealings with the mortgage:

“WHAS the sd A. is seised in fee simple in posson of the hds hby assured free from incumbces, except the ppal sum of £—— [sums of £—— & £——] secd thron with intt, by a mtge in fee simple, dated, &c., & made, &c. [& a deed of transfer & further chge, dated, &c., & made, &c.], wch sd ppal sum of £—— [sums of £—— & £——, makg togr the sum of £——] togr with the secs for the same has [have] by the effect of divers mesne assurances, acts in the law, & events, & ultimately by an indre dated, &c., & made, &c., become vested in the sd B., but all intt on the sd sum of £—— has been pd up to the date of these psnts.”

Variation
for concise
recitals.

(f) If no part of the purchase-money is to be paid to the mortgagee, the recital as to the state of the mortgage debt will state that the principal with “some intt” is due (or it may be omitted); the recital as to the mortgagee joining will be as at p. 373, and the consideration will be, “in conson of the sum of £—— pd by the sd C. to the sd A., with the consent of the sd B. (the rect, &c.), & of the premes.”

Variation
where
mortgagee
receives no
part of
purchase-
money.

If part of the purchase-money is to be paid to the mortgagee in part

PREC. X.

Grant.

Haben-
dum.

reqt (a) of the sd A. in mner follg, namely, the sum of £—— pt thof to the sd B., in full dischge of the moys owing to him under the sd mtge secy as afsd (the rect whof the sd B. doth hby acknowe) & the sum of £—— residue thof to the sd A. (the rect & paymt in mner afsd of wch respive sums, makg togr the sd pchase-moy of £——, the sd A. doth hby acknowe), the sd B., as mtgee (b), by the diron of the sd A. (c), doth hby grt & rele, & the sd A., as benefl owner, doth hby grt & confirm unto the sd C., *pcels*, p. 377 *et seq.*, To HOLD the same premes UNTO & TO THE USE of the sd C., his hrs & assns, dischged from all ppal moys & intt secd by & from all claims &

Where mortgagee receives part of purchase-money in part discharge.

discharge of the mortgage, the recital as to the state of the mortgage debt will state the amount due on the mortgage as in the text; the recital as to the mortgagee joining will be as at p. 373, and the consideration will be "In conson of the sum of £—— now pd by the sd C., by the diron of the sd A., in mner follg, namely, the sum of £——, pt thof to the sd B., in dischge of the sum of £—— so due to him for intt, & in pt dischge of the sum of £—— so due to him for ppal as afsd (the rect, &c.), & the sum of £——, the residue thof to the sd A. (the rect. &c.)."

The rest of the precedent will follow the form in the text, or in note (e), p. 441, as may be desired.

Where mortgagor receives all purchase-money.

(a) If all the purchase-money is paid to the mortgagor, say, "at the reqt of the sd B. to the sd A., the rect whof he, the sd A., & the paymt whof in mner afsd he, the sd B., doth hby acknowe."

Implied covenants.

(b) See p. 398 *et seq.* The words "as mtgee," imply the usual covenant against incumbrances by the person conveying in that capacity; and the words "as benefl owner," imply full covenants for title by A. If the mortgagee is not paid off in full, as he is not compellable to join, he should convey "at the reqt," and not "by the diron," of the vendor. But if the mortgage was created by the vendor, or by any person through whom he claims otherwise than for value, his statutory covenants forttitle would extend to the acts of the mortgagee as being a person "claiming under" him (*David v. Sabin*, [1893] 1 Ch. 523); there would, however, in that case be an inaccuracy (though not of any importance) in the covenant for right to convey, see p. 399.

Variation for mortgage by demise.

(c) Where the mortgage is by demise say, "& to the intent that the sd term of —— yrs created by the sd indre of mtge may merge in the revon of the hds comprd thrin & hby assured, doth hby assn, surrender, & rele, & the sd A., &c."

demands under the hinfie recited indre of mtge of, &c. (d).
IN WITS, &c. (e).

PREC. X.

XI.

ASSIGNMENT of LEASEHOLDS by MORTGAGOR and MORTGAGEE to a Purchaser, where the mortgage was by DEMISE. VARIATION for mortgage by ASSIGNMENT (f).

PREC. XI.

PARTIES, A., mtgor, 1; B., mtgee, 2; C., pchaser, 3. WHAS Recitals.
by an indre of lease dated, &c., & made, &c., pcels in full, with Lease.
the appurts thof were demised unto the sd A., his exs, ads, &
assns, from the — day of — for the term of — yrs,
subjt to the paymt of the rent thby reserved & the pformce &
observe of the covts on the pt of the lessee & condons thrin
contd: AND WHAS, by an indre dated, &c., & made, &c., the Mortgage.
premes comprd in the sd lease were demised by the sd A. to the
sd B., his exs, ads, & assns, for the residue of the term thby
grted, except the last day thof (g), by way of mtge for securg
the paymt to the sd B., his exs, ads, or assns, of the sum of
£—, with intt thron at the rate & on the day thrin mentd:
AND WHAS the sd A. has agrd with the sd C. for the sale to him Contract
for sale.

(d) Add, if required immediately before the testatum, recital as to muni- As to mu-
ments retained by A., and at end of deed acknowledgment and undertaking niments.
y him as to production; or if B. is not fully paid off and retains the deeds,
add acknowledgment by him, but without any undertaking, see pp. 413,
414, note; apparently a mortgagee is bound in that case to give an
acknowledgment, see *Yates v. Plumbe*, 2 Sm. & G. 174; 1 Dart, V. & P. 766.
As to the insertion of qualifying words in the conveyance by him, see *Mostyn*
v. Mostyn, [1893] 3 Ch. 376.

(e) With regard to the stamp on a conveyance by mortgagor and mort- As to stamp
gagee, it may be observed that the deed is not treated as chargeable with duty on
"reconveyance" duty in addition to the *ad valorem* sale duty, although conveyance
if the mortgage were released by a separate deed, the extra duty would by mort-
be incurred. It may also be mentioned, that if part only of the property gator and
in the mortgage is released by a separate deed, it is treated in practice as mortgagee.
liable only to a 10s. duty, the full reconveyance duty being payable on the
final release.

(f) This may be shortened in a manner similar to Precedent VIII.

(g) For the case of a mortgage by assignment, say "assned" instead of Variations
'demised,' and omit the words "except the last day thof." for mort-
For recital of devolution of title to the mortgage, see Form XXVII., p. 355. gage by as-
signment.

PREO. XI.

State of
mortgage
debt.Agreement
for mort-
gagee's
concur-
rence.
Witnes-
seth.Assign-
ment.Haben-
dum.

for the sum of £—— of the premes comprd in the sd lease for all the residue now to come of the sd term thby grted as afsd subjt to the rent reserved by & the covts & condons contd in the sd lease: AND WHAS the sd sum of £—— still remains owing to the sd B. on the secy of the sd indre of mtge of, &c., but all intt thron has been pd up to the date of these psnts: AND WHAS it has been agrd that the sd sum of £—— shl be pd to the sd B. out of the sd pchase-moy, & that he shl concur in these psnts in mner hinafter appearg: NOW THIS INDRE WITNETH that in psuance of the sd recited agrmt & in conson of the sum of £——, now pd by the sd C. at the reqt of the sd A. in mner follg, namely, the sum of £—— pt thof to the sd B. in full dischge of the moys owing to him under his sd mtge secy as afsd (the rect whof the sd B. doth hby acknowe) & the sum of £——, residue thof to the sd A. (the rect & paymt in mner afsd of wch respive sums, makg togr the sd pchase-moy of £——, the sd A. doth hby acknowe), the sd B., as mtgee, by the diron of the sd A., to the intent that the sd term created by the sd indre of mtge of, &c., may merge in the sd term created by the sd indre of lease, doth hby assn, surrender, & rele (a) & the sd A., as benefl owner, doth hby assn & confirm unto the sd C. all & singr the [pces or pcels of land, messes or tenemts] hds & premes comprd in or demised by the sd recited indre of lease To HOLD the same unto the sd C., his exs, ads, & assns, henceforth for all the residue now unexpired of the sd term of —— yrs, grted by the sd indre of lease, subjt henceforth to the paymt of the rent & pformce & observee of the covts on the pt of the lessee & condons by & in the same indre reserved & contd, but dischged from all ppal moys & intt secd by & from all claims & demands under the sd indre of mtge of, &c.: *Cort by C. to indemnify A. agst rent & covts of lease*, p. 419 (b). IN WITS, &c.

(a) If the mortgage of the lease was by assignment, say, "the sd B., as mtgee, by the diron of the sd A., doth hby assn & rele."

(b) As to muniments, see p. 443, note (d).

XII.

CONVEYANCE of FREEHOLDS, COPYHOLDS, and LEASEHOLDS with the concurrence of FIRST AND SECOND MORTGAGEES of the FREEHOLDS, the LATTER being also MORTGAGEES of the COPYHOLDS and LEASEHOLDS. PREC. XII.

PARTIES, A., vendor, 1; B. & C., first mtgees of freehds, 2; D., second mtgee of freehds, & mtgee of leasehds & copyhds, 3; E., purchaser, 4. *Recite mtge in fee to B. & C. of freehds, p. 351, omittg the cort for paymt; Lease under wch leasehds are held, p. 357; Mtge to D. of freehds (subjt to the prior mtge), of the copyhds by cort to surrender, & of the leasehds by demise or assnmt, p. 353; Condonal surrender of copyhds, to D., p. 352; Contract for sale, p. 370; Agrmt for apportionmt of pchase-moy for stamp duty as to copyhds, p. 374; State of mtge debts, ppal due with "some intt," p. 373; AND WHAS it has been agrd that the whole of the sd pchase-moy shl be pd to the sd A., & that the sd B. & C., & also the sd D., shl concur in these psnts in mner hinafter appearg: [Agrmt as to munimts, p. 374]: NOW THIS INDRE, &c., that in psuance, &c., & in conson of the sum of £——, apportioned pchase-moy for the freehds & leasehds, now pd by the sd E. to the sd A. with the consent of the sd B. & C. & also of the sd D. (the rect, &c.), & in conson of the premes they the sd B. & C., as mtgees, at the reqt of the sd A., do hby grt & rele, & the sd D., as mtgee, at the reqt of the sd A., doth hby grt & rele, & the sd A., as benefl owner, doth hby grt & confirm unto the sd E., freehd pcels, p. 377 et seq.; Habendum to E. in fee, free from the mtges, p. 395. AND THIS INDRE FURTHER WITNETH that in psuance, &c., & for the conson afsd, the sd D., as mtgee, at the reqt of the sd A. (c), doth hby assn & rele, & the sd A., as benefl owner, doth hby assn & confirm, &c., assnmt of leasehds to E., for residue of term, free from the mtge, subjt to the rent & corts, pp. 395, 396. AND THIS INDRE ALSO WITNETH that in psuance, &c., & in conson of the sum of £——, apportioned pchase-moy for copyhds, now pd by the sd E. to the sd A., with the consent of the sd D. (the rect,*

Recitals.

Witnesseth.

Grant.

Further witnesseth.

Assignment.

Further witnesseth.

Covenant to surrender copyholds.

(c) For variations if the mortgage of the leaseholds was by demise see last precedent.

PREC. XII.

Witnes-
seth.Release of
copyholds.

&c.), & in conson of the premes, *covt by A. at the reqt of D. to surrender copyhds to E. in fee*, p. 433 (a), “dischged from all ppal moys & intt, &c.,” *secd by the mtge*, p. 395, *form viii.*, & *declon of trust thof in the meantime*, p. 434. AND THIS INDRE ALSO WITNETH that in further psuance, &c., & in conson of the premes the sd D., as mtgee, at the reqt of the sd A., doth hby rele unto the sd E., his hrs & assns, ALL & singr the hds hby covted to be surrendered, dischged from all ppal moys & intt secd by, & all claims under the sd indre of mtge of, &c.: [Acknmt by B. & C., & by D. as to munimts retained by them resply, p. 418]: *Covt by E. with A. to pay rent & pform corts of lease*, p. 419. IN WITS, &c.

XIII.

PREC. XIII.

CONVEYANCE of FREEHOLDS by MORTGAGOR and MORTGAGEE to TENANTS in COMMON; the MORTGAGE being kept alive for the benefit of the purchasers (b). VARIATION where the mortgagee is dead, and his REPRESENTATIVE joins (c).

Recitals.

PARTIES, A., *mtgor*, 1; B., *mtgee*, 2; C. & D., *pchasers*, 3; E., *tree for pchasers*, 4. *Recite mtge formally*, includg the corts for

As to
keeping
alive
mortgage
debt.

(a) The conditional surrender to D. will be vacated.

(b) This precedent is an example of a method of keeping alive a mortgage as a protection to a purchaser against possible concealed incumbrances of later date, as to which, see 2 Dav. Prec., part 1, p. 324. *Liquidation, &c., Co. v. Willoughby*, [1896] 1 Ch. 726. Keeping alive the mortgage debt as personal estate of the purchaser may possibly alter the duty payable in respect of it on his death; compare *A.-G. v. Ailesbury*, 12 App. Cas. 672.

Devolution
of mort-
gaged
estates.
V. & P.
Act, 1874.

(c) The legal estate in lands of inheritance vested in a mortgagee dying before the 1st of January, 1882 (the date of the coming into operation of the Conv. Act, 1881), devolved on his heir or devisee; but by the V. & P. Act, 1874, s. 4, the legal personal representative of a mortgagee was enabled “on payment of all sums secured by the mortgage,” to convey or surrender the mortgaged estate (being freehold or copyhold to which the mortgagee had been admitted); so that in the case of a mortgagee dying before 1882, the re-conveyance on discharge of the mortgage may be made either by the personal representative, or by the heir (or devisee), in whom (subject to the statutory power given to the personal representative) the legal estate remains vested, and who is not disabled by the Act from re-conveying. This enactment did not apply to a transfer of the mortgage (*Re Spradbery's Mortgage*, 14 Ch. D. 514), nor to a conveyance to a purchaser under the power

paymt of ppal & intt, p. 351 ; *Contract for sale*, p. 370 ; *State of mtge debt*, p. 373 ; AND WHAS it has been agrd that the sd sum of £——, *the amt of ppal & intt*, shl be pd to the sd B. out of the sd pchase-moy, & that the sd mtge shl be kept on foot for the benefit of the sd C. & D., & that the sd B. shl concur in these psnts in mner hinafter appearg: NOW THIS INDRE

PREC. XIII.

Agreement.

Witnes-
seth.

of sale (*Re White's Mortgage*, W. N. 1881, p. 115), but only to a conveyance on redemption ; and it is doubtful whether it applied to the above precedent, where the mortgage debt is transferred to a trustee.

The clause in the Act of 1874 was repealed by the Conv. Act, 1881, s. 30, which enacts (as to mortgagees dying after 1881), that a mortgaged estate of inheritance shall, on the death of the mortgagee, and "notwithstanding any testamentary disposition," vest in his personal representative in the same manner as a chattel real. In the case therefore of a mortgagee dying after 1881, the legal estate in freeholds must be conveyed by the personal representative. It seems doubtful whether this enactment, which relates to trust and mortgaged estates vested "in any person solely" applies to a feme covert mortgagee, where in cases not falling under the Married Women's Property Act, 1882, the legal estate is in the husband and wife jointly in right of the wife.

Provisions
of the
Conv. Act,
1881.

By the Copyhold Act, 1894 (57 & 58 Vict. c. 46) repealing, and by s. 88, re-enacting, the Copyhold Act, 1887 (50 & 51 Vict. c. 73), s. 45, section 30 of the Conv. Act, 1881, is not to apply to copyholds to which the mortgagee has been admitted, so that in that case (which, however, is of rare occurrence) the heir or devisee must convey ; and this repeal has been held to operate retrospectively, *Re Mills*, 37 Ch. D. 312 ; see above, p. 434. It may be remarked that this repeal of the enactment of 1881, would not, it is conceived (having regard to the Interpretation Act, 1889, s. 11), revive (as to copyholds) the repealed Act of 1874, as to reconveyances on redemption.

Copyhold
Acts, 1887
and 1894.

In the above precedent, if the mortgagee be dead, the following alterations would be required. His executor or administrator, and if he died before 1882, his heir or devisee, but otherwise only his executor or administrator, will be a party of the 2nd (or 2nd and 3rd) part ; see above. After the recital of the mortgage will follow recitals of the will, if any, of the mortgagee, as to the appointment of executor, and (if under the old law) the devise, if any, of mortgaged estates,—the death ; and (under the old law, and if no devise), the heirship, and probate ; or, if no will, his death intestate and (if under the old law) the heirship and grant of administration. The mortgage money will be stated to be paid to the executor or administrator, by whom the mortgage debt will be assigned "as mtgee," or "as psonal repve" of the mortgagee, the statutory covenant against incumbrances being implied in either case. No recital should be inserted as to the heir or devisee agreeing to concur, as he is bound to do so if required. The legal estate will be conveyed by the personal representative, or by the heir or devisee as the case may be (see above), "as mtgee," or (as to the former) "as psonal repve."

Variations
where the
mortgagee
is dead.

PREC. XIII.

Assign-
ment of
debt.Haben-
dum.Upon
trust.Further
witnesseth.

Grant.

Habendum
to pur-
chaser,
subject to
the mort-
gage.

WITNETH that in psuance, &c., & in conson, &c., the rect, &c., (£—— *pd* to B., & £—— to A.), the sd B., as mtgee, by the diron as well of the sd A., as of the sd C. & D., doth hby assn unto the sd E. (a), ALL THAT the sd sum of £——, owing on the secy of the sd indre of mtge of, &c., & the intt due & to accrue due thron, & the benefit of all secs for the same To HOLD the same UNTO the sd E., his exs, ads, & assns, UPON TRUST for the sd C. & D., & their respive hrs & assns, & to assn & dispose of the same as they, the sd C. & D., & their respive hrs & assns, shl direct, & in the meantime to permit the sd ppal sum & intt to attend the inhance of the hds comprd in the sd mtge & hby grted, & to protect the same agst all mesne incumbces, chges, & estes, if any such there be : AND THIS INDRE FURTHER WITNETH that in psuance, &c., & for the conson afsd, the sd B., as mtgee, by the diron of the sd A., doth hby grt, & the sd A., as benefl owner (b), doth hby grt & confirm unto the sd C. & D., ALL, &c., *pcels*, p. 377 *et seq.* To HOLD the same premes UNTO & TO THE USE of the sd C. & D., their hrs & assns, as tenants in common, in eql shares, but subjt nevs to & chged with the sd sum of £—— & intt hby assned to the sd E., his exs, ads, & assns, in trust as afsd, to the intent that the chge created by the sd indre of mtge of, &c., shl remain subsistg in equity & vested in the sd E., his exs, ads, & assns, IN TRUST for the benefit of the sd C. & D. & their respive hrs & assns & as a protection agst mesne incumbces as afsd. IN WITS, &c.

Assign-
ment of
debt on
payment.

(a) Prior to 1882, a mortgagee could not be required to assign his debt on being paid off (*Dunstan v. Patterson*, 2 Phil. 345 ; 2 Dav. Prec., part 2, p. 280); but by the Conv. Act, 1881, s. 15, a mortgagee, whether legal or equitable, on being redeemed by the mortgagor or any one claiming under him (see the definition of "mortgagor" in s. 2), may (unless he is in possession) be required to assign the debt and convey the mortgaged property as the person redeeming him may direct. In consequence of the decision in *Teeran v. Smith*, 20 Ch. D. 724, that the section only applied when the person redeeming could have required a reconveyance to himself, it was enacted by the Conv. Act, 1882 (45 & 46 Vict. c. 39), s. 12, that the right thereby conferred should be enforceable by each incumbrancer or by the mortgagor, notwithstanding any intermediate incumbrance. Sect. 15 of the Act of 1881 does not apply where a tenant for life of mortgaged property has obtained the usual order permitting him to redeem on terms which prevent interest and costs from running against the remainderman ; *Alderson v. Elgey*, 26 Ch. D. 567.

(b) See page 398 *et seq.*, 407, note (e), 408, note (g).

XIV.

CONVEYANCE of FREEHOLDS, LEASEHOLDS, and COPYHOLDS by a MORTGAGEE under a POWER OF SALE contained in the mortgage, or the power in the TRUSTEES and MORTGAGEES ACT, 1860, or the CONVEYANCING ACT, 1881 (c). The mortgage of the LEASEHOLDS having been effected by DEMISE. VARIATIONS where it was effected by ASSIGNMENT (d).

PREC. XIV.

PARTIES, A., mtgee, 1; B., pchaser, 2. Recite lease to K., mtgor, settg out the pcels fully, p. 357; Mtge, p. 358, omittg the cort for paymt, [& it was by the same indre provd, &c., set out

Recitals.

Mortgage.

(c) See the former Act (Lord Cranworth's), 23 & 24 Vict. c. 145, ss. 11—16, 32 and 33, applying to mortgages by deed, whether legal or equitable, but of real or leasehold property only, executed between the 28th Aug., 1860, and the end of 1881; and the latter Act, ss. 19—22, and 67 (and see the definition of "mortgage," &c., in s. 2), applying to mortgages by deed, whether legal or equitable, of any property real or personal, executed since 1881. The statutory provisions are subject in every case to the terms of the mortgage, by which they may be excluded or varied. The provisions in the Act of 1860 as to mortgages are repealed by the Act of 1881, but with a saving as to deeds previously executed (s. 71); see *Re Solomon*, 40 Ch. D. 508. A mortgagee selling under either Act is empowered to give receipts for the purchase-money, and the purchaser is fully protected against any irregularity (for want of notice or otherwise) in the sale, except (it is presumed), where he has express notice of it; see *Parkinson v. Hanbury*, 1 Dr. & Sm. 143; *Selwyn v. Garfit*, 38 Ch. D. 273.

Statutory powers of sale.

Under the Act of 1860, s. 15, a mortgagee selling is empowered by deed to convey the property to the purchaser for all the estate and interest which the mortgagor had power to dispose of, except that in the case of copyholds the beneficial interest only is to pass; this has been held to enable a mortgagee of leaseholds by demise to convey the whole term; *Hiatt v. Hillman*, 19 W. R. 694; and an equitable mortgagee (by deed) to convey the legal estate; *Re Solomon*, *ubi sup.* But the power in the Act of 1881 to convey to the purchaser (s. 21) is more restricted, being confined to "such estate and interest as is the subject of the mortgage," and does not enable an equitable mortgagee by deed to convey the legal estate vested in the mortgagor, *Re Hodson*, 35 Ch. D. 668. Both Acts in terms only authorise

Power to convey.

(d) As to the effect of a sale by a first mortgagee to the mortgagor on a second mortgage, see *Otter v. Lord Vaux*, 6 De G. M. & G. 638; and as to the effect in the like case of a sale to the mortgagor's trustee in bankruptcy, see *Bell v. Sunderland Building Society*, 24 Ch. D. 618. A second mortgagee can safely purchase from a first mortgagee selling under his power of sale: *Shaw v. Bunny*, 33 Beav. 494, 2 De G. J. & S. 468; *Kirkwood v. Thompson*, 2 De G. J. & S. 613.

PREO. XIV. *fully the follg clauses of the power of sale, the authority to sell & convey, the declon (if any) that the nominal revon of the leasehds, if mtged by demise, shd be held in trust for the pchaser, the clause protectg pchasers from irregularities in the sale, & the rect clause (if any)]; Condonal surrender of the copyhds to A., p. 352, (a) Agrmt for sale by mtgee, p. 371, saying as to the leasehds, "for all the residue now to come of the sd term thby grted, & for all such este & intt in the nominal revon of — days thby reserved as the sd A. is entled to or has power to assn" (b); Apportionmt of pchase-moy for stamp duty as to copyhds, p. 374; [Recital as to munimts, p. 374]: NOW THIS INDRE WITNETH that in psuance of the sd agrmt, & in conson, &c., the sum being the apportioned pchase-moy for the freehds & leasehds (the rect, &c.) the sd A. as mtgee, in exercise of the power vested in him by virtue of the hinbfe recited indre of mtge [& the statute on that*

Wit-
nesseth.

assurances by deed, leaving the power to execute customary assurances of copyholds to implication.

As to
notice.

A notice to pay off the mortgage-money preparatory to a sale cannot under the usual power be validly given till after default, *Selwyn v. Garfit*, 38 Ch. D. 273. As to what is a sufficient notice where the equity of redemption has been incumbered, it was held in *Hoole v. Smith*, 17 Ch. D. 434, where notice was required to be given to the mortgagor "or his assigns," that notice to the mortgagor alone was insufficient; but this, as it seems, would not apply to the power in the Act of 1860 (see s. 13); and as regards the Act of 1881, although by s. 20, sub-s. 1, notice is required to be given to "the mortgagor or one of several mortgagors," and by s. 2 "mortgagor," includes all persons interested in the equity of redemption, difficulty would rarely arise, having regard to s. 67, by which notices may be served, among other modes, by being left at or affixed to the mortgaged premises.

As to a sale by a mortgagee to a company in which he is a shareholder, see *Farrar v. Farrars Ltd.*, 40 Ch. D. 395.

Mines and
minerals.

The Confirmation of Sales Act (25 & 26 Vict. c. 108), s. 2, authorised trustees, or any other persons authorised to dispose of land by way of sale, to sell the land apart from the mines and minerals, or the mines and minerals apart from the land, with the sanction of the Court. This Act was repealed by the Trustee Act, 1893, and re-enacted, with the exception of the words in italics, by s. 44. These words were in effect re-enacted by the Trustee Act (1893) Amendment Act, 1894 (57 & 58 Vict. c. 10), s. 3.

As to state
of mort-
gage debt.

(a) If the sale is made under the statutory power or an express power of sale in the proper form, it does not concern the purchaser to inquire into the state of the mortgage debt; and a recital as to this need not be inserted.

(b) If the mortgage of the leasehold was by assignment, the reference here and in the operative part to the nominal reversion left in the mortgagor will of course be omitted.

behalf,] & of every other power enablg him in this behalf, doth hby grt & convey unto the sd B., *freehd pcels*, p. 377 *et seq.*: *Habendum to B. in fee*, p. 393, *free from equity of redmon*, p. 397; AND THIS INDRE FURTHER WITNETH, that, in psuance of the sd agrmt, & for the conson afsd, the sd A., as mtgee, in exercise, &c., *as above*, doth hby assn unto the sd B., ALL & SINGR the sd — hds & premes comprd in & demised by the hinbfe recited indre of lease; *Habendum to B.*, his exs, ads, & assns, for all the residue now unexpired of the sd term of — yrs less — days, & for all such este or intt in the same nominal revon of — days as the sd A. is entled to or has power to assn (c) *free from equity of redmon, as above, but subjt to rent & covts of lease*, p. 396: AND THIS INDRE ALSO WITNETH that in further psuance of the sd agrmt, & in conson, &c., *the apportioned pchase-moy for the copyhds* (the rect, &c.), the sd A., as mtgee, in exercise, &c., *as above*, doth hby covt with the sd B., his hrs & assns, that he, the sd A., his hrs or assns, will immedly after the exon of these psnts, at the cost of the sd B., his hrs or assns, surrender (d) into the

PREC. XIV.

Grant of
freeholds,
free from
mortgage.
Further
witnesseth.
Assign-
ment of
leaseholds.

Further
witnesseth.

Covenant
to sur-
render
copyholds.

(c) This would pass the mortgagee's equitable interest in the nominal reversion under the declaration of trust thereof (if any) in the mortgage, and also, in cases to which the Act 23 & 24 Vict. c. 145, s. 15, applies, the legal interest therein; see above, p. 449, note. If the mortgagee has a power of attorney to assign the nominal reversion to a purchaser, and the power is expressed to be irrevocable, he can do so notwithstanding circumstances which would formerly have operated as a revocation (Conv. Act, 1882, s. 8); see p. 180, note. This applies also to copyholds covenanted to be surrendered with a declaration of trust till surrender and a power of attorney. If the mortgage contains the device for enabling the mortgagee to get in the nominal reversion by a clause empowering him to appoint a new trustee thereof in place of the mortgagor, and to make a vesting declaration under the Trustee Act, 1893, repealing and (by s. 12) re-enacting the Conv. Act, 1881, s. 34, the following should be added, which is conceived to be effectual, although the case is one of a sole trustee, notwithstanding the words "as joint tenants" in the Act.

As to
nominal
reversion.

"And in psuance of the power or provon for this ppose contd in the sd indre of mtge the sd A. doth hby appt the sd B. to be a tree of the sd nominal revon of — days in the place of the sd, *mtgor*, & in psuance of the power or provon afsd, & of the statutory provon in this behalf doth declare that the sd nominal revon of & in the sd leasehd premes shl vest in the sd B. as such tree."

Appoint-
ment and
vesting
declaration
as to
nominal
reversion.

(d) This of course implies that the mortgagee must first get admitted on

Mode of

PREC. XIV. hands of the lord or lady of the sd manor, *copyhd pcels*, p. 377
 To use of purchaser. *et seq.*; To THE USE of the sd B., his hrs & assns, accdg to the custom of the sd manor by & under the rents, fines, suits, & services due & of rt accustomed for the same, but free, &c., *from equity of redmon, as above.* If the mtge of the leasehds was effected by assnmt, & A. will be under any continuing liability (see p. 243, note (h), add cort by B. with A., his exs & ads, for indemnity agst rent & corts of lease, p. 419; [Statutory acknowemt by A. as to munimts, p. 418, see p. 428, note (b)]. IN WITS, &c.

XV.

PREC. XV. CONVEYANCE of FREEHOLDS by MORTGAGEES under a
 POWER of SALE. A CONCISE Form by SUPPLEMENTAL DEED (a) without Recitals. VARIATION where the Sale is made under the STATUTE of 1860 or 1881 (b).

PARTIES, A. & B., mtgees (hinafter called the vendors), 1; C., pchaser (hinafter called the pchaser), 2; supplemtl to an indre of mtge dated, &c., & made, &c., WITNETH that in conson, &c. (the rect, &c.), the vendors, as mtgees in exercise of the power conferred on them by the above-mentd indre of mtge, [& the statute in that behalf], & of every other power in this behalf them enablg, do resply hby grt unto the pchaser, *pcels*, p. 377 *et seq.*; *Habendum to pchaser in fee, free from mtge*, p. 395, *form VIII.* IN WITS, &c.

conveying copyholds. the conditional surrender, unless the mortgagor's concurrence can be obtained, and there are no subsequent surrenders on the Court rolls, in which case the fine on the mortgagee's admittance may be saved by vacating the conditional surrender and procuring a surrender direct from the mortgagor to the purchaser.

(a) See p. 349, note.

(b) See p. 449, note (c).

XVI.

CONVEYANCE of *Freeholds* by EXECUTORS of a MORTGAGEE, under an EXPRESS POWER of SALE. VARIATIONS where there has been a FURTHER CHARGE and TRANSFER of the MORTGAGE, and where the mortgagee having died before 1882 his HEIR concurs (c).

PREC. XVI.

PARTIES, A. & B., *exs* of *mtgee* or *transferee*, 1; [C., *hr* of *mtgee* or *transferee*, 2;] D., *pchaser*, 3. Recite the *mtge*, settg out the power of sale (if any), namely, the authority to sell & convey, [the *provon* as to *hr* of *mtgee* joing in *conyce*,] the clause protectg *pchasers*, & the rect clause (if any), [& if the *mtge* has been transferred, add the clause (if any), declarg that the power may be exercised by any one capable of givg a *dischge* for the *mtge-moy*, recite the further *chge* (if any), and transfer, p. 354]: AND WHAS the sd, *mtgee* or *transferee*, died on the — day of —, havg by his will dated the — day of — appted the sd A. & B. *exs* thof, who duly proved the same on the — day of —, in the — Ct of —: [AND WHAS the sd, *mtgee* or *transferee* died intestate as to the legal este in the sd *mtged* premes, & left the sd C. his eldest son & *hr* at law]: *Agrmt for sale*, p. 370: NOW THIS INDRE WITNETH that in psuance, &c., & in conson of the sum of £—— now pd by the sd D. to the sd A. & B. (the rect, &c.), [the sd C., as *tree* by the *diron* of the sd A. & B., doth hby grt &], the sd A. & B. as *mtgees*, in exercise, &c., see p. 450, do hby grt & confirm unto the sd D., *pcels*, p. 377 *et seq.*; *Habendum to D. in fee, free from equity of redmon*, p. 397, form XVII., if there has been a further *chge* & transfer, say, “indres of *mtge* & further *chge* & transfer, or *oir* of them.” IN WITS, &c.

Recitals.

Will of mortgagee.

Intestacy as to legal estate of mortgaged property.

Wit-nesseth.

Grant.

(c) If the mortgagee died before 1882, his heir or devisee of mortgage estates must concur, notwithstanding the Vendor and Purchaser Act of 1874, s. 4, *Re White*, 29 W. R. 820; if he died since the 31st Dec., 1881, the legal estate necessarily vests in and will be conveyed by his personal representatives under the Conv. Act, 1881, s. 30; see p. 446, note.

Devolution of mortgage estates.

XVII.

PREC. XVII.

CONVEYANCE *by surviving mortgagees under a power of sale of LIFE INTERESTS in REALTY and PERSONALTY and POLICIES (a).*

Recitals.

Mortgage
of life
estate, &c.Sale of
settled
estates.

PARTIES, A. & B., *mtgees*, 1; C., *pchaser*, 2. *WHAS* by an indre, &c., the sd K., *mtgor*, bargained, sold, & demised his este for life under the will of Y., deced, in the — & hds specified in the 1st & 2nd pts of the 1st schdle hto, the freehd & inhance whof was then subjt to the anny, mtges, & chges specified in the 1st & 2nd pts of the 2nd schdle hto, to the sd A., & B., & D., their exs, ads, & assns, for the term of 99 yrs from the day next bfe the date of the indre now in recital, if the sd K. shd so long live, & the sd K. thby assned his life intt in the divds & annl income of the stks, funds, shares, & secs subjt to the trusts of an indre of settlemt, &c., & specified in the — schdle to the indre now in recital, & also the sevl pols of assurse on the life of the sd K., the parlars whof are specified in the 4th schdle hto, to the sd A., B., & D., their exs, ads, & assns, by way of mtge, to secure the repaymt to the sd A., B., & D., or the survors or survivor of them, or the exs or ads of such survivor, their or his assns, of the sum of £—, togr with intt thron after the rate & on the day thrin mentd, & it was thby provd, &c., *recite the clauses of the power of sale, if any, as in Prec. XVI. (omittg the provon for the heir concurrng), & jt acct clause, if any (b)*; AND *WHAS* in exercise & psuance of certn powers of sale & provons contd in the sd will of the sd Y., the — & hds specified in the 2nd pt of the sd 1st schdle hto have been sold, & the pchase-moys have been applied in the dischge of the incumbces specified in the 2nd pt of the sd 2nd schdle hto, & in the pchase of £— Stk, in the names of L.

(a) As to the effect of an alienation by a tenant for life of real estate, of his life estate, on his powers under the Settled Land Act, 1882, see *infra*, p. 456 *et seq.* Notice of this deed should be given to the trustees of the settlement, and the insurance office; as to the latter, see the Policy of Assurance Act, 1867, and as to the necessity of stamping the deed, the Stamp Act, 1891, s. 118.

(b) See p. 449, note (c). An express power of sale would be necessary as to personalty before 1882, as the power in Lord Cranworth's Act would not apply. As to the joint account clause, see Conv. Act, 1881, s. 61.

& M., the psnt trees of the sd will : AND WHAS the stks, funds, shares, & secs now subjt to the trusts decld by the sd indre of settlemt, & representg the stks, funds, shares, & secs specified in the — schdle to the hinbfe recited indre of mtge, are specified in the 3rd schdle hto : *Recite death of D.* : AND WHAS the sd A. & B. have, in exercise of the power of sale conferred on them by the sd indre of mtge [& the statute in that behalf], agrd with the sd C. for the sale to him for the sum of £——, of the hds specified in the 1st pt of the sd 1st schdle hto, & the sd sum of £—— Stk, & any hds, stks, funds, shares, or secs, wch, by virtue of the powers or provons contd in the sd will, may at any time hrafter be substituted for the same hds & Stk resply, subjt to the anny, mtges, & chges specified in the sd 1st pt of the sd 2nd schdle hto, for the residue now unexpired of the sd term of 99 yrs, if the sd K. shd so long live : And also the life intt of the sd K., in the divds & annl income of the stks, funds, shares & secs, the parlars whof are specified in the sd 3rd schdle hto, & in the stks, funds, shares, & secs wch, by virtue of the powers & provons of the sd indre of settlemt, may hrafter be substituted for the same, & also the sevl pols specified in the 4th schdle hto, & the moys assured thby resply : NOW THIS INDRE WITNETH that in psuance, &c., & in conson, &c. (the rect, &c.,) the sd A. & B., as mtgees in exercise of the power or authority conferred on them by the sd recited indre of mtge [& the statute in that behalf], & of every other power or authority in this behalf them enablg, do resply hby grt & assn unto the sd C. : 1st, ALL & SINGR the — & hds specified in the sd 1st pt of the sd 1st schdle hto : 2ndly, ALL THAT the sd sum of £—— Stk : 3rdly, ALL & SINGR the hds, stks, funds, shares, & secs wch, by virtue of any of the powers or provons of the sd will of the sd Y., may at any time hrafter be substituted for the sd hds specified in the 1st pt of the sd 1st schdle hto, or any of them, or for the sd sum of stock or any pt thof, & the rents, profits, divds, & income of the same respive premes, 1st, 2ndly, & 3rdly, hinbfe mentd : To HOLD all the sd premes hby assned UNTO the sd C., his exs, ads, & assns, subjt to the anny, mtges, & chges specified in the sd 1st pt of the sd 2nd schdle hto, for the residue now unexpired of the sd term of 99 yrs, if the sd K. shl so long live, free & dischged from the ppal moys & intt secd by, & all claims

PREC. XVII.

Invest-
ments of
settled
personalty.

Agreement
for sale.

Wit-
nesseth.

Grant.

Freeholds.

Haben-
dum.
To pur-
chaser.

PREC. XVII. & demands under, the sd indre of mtge: AND THIS INDRE
 Wit- ALSO WITNETH that in psuance, &c., & for the conson afsd,
 nesseth. the sd A. & B. as mtgees in further exercise of the power or
 Assign- authority afsd, do resply hby assn unto the sd C.: 1st, ALL
 ment. THAT the life intt of the sd K., in the sd stks, funds, shares, &
 Personalty. secs specified in the sd 3rd schdle hto, & in any moys, stks,
 funds, shares, & secs hrafter representg or substituted for
 Policies. the same, or any of them, or any pt thof resply, & the
 intt, dvids, & annl income of the same respive premes, &
 Habendum. 2ndly, ALL THOSE pols of assurce specified in the sd 4th
 To pur- schdle hto, & all moys assured by, or to become payable under
 chaser. the same resply: To HOLD all the sd premes lastly hby assned
 UNTO the sd C., his exs, ads, & assns absolutely, free &
 dischged, &c., *as above*. IN WITS, &c.

[*Four Schdles.*]

NOTE ON SETTLED LAND ACTS.

Provisions
of Settled
Land Acts
as to sales.

As many of the following precedents are based on or affected by th Settled Land Act, 1882 (45 & 46 Vict. c. 38), it will be convenient to insert here a short notice of the provisions of that Act, and the Amending Acts of 1884 (47 & 48 Vict. c. 18), 1887 (50 & 51 Vict. c. 30), 1889 (52 & 53 Vict. c. 36), and 1890 (53 & 54 Vict. c. 69), and the decisions and various points arising thereon, relative to sales.

What is a
settlement
within the
Act.

By s. 2, sub-s. 1, the Act applies to all settlements both past and future of "land," (which includes land of any tenure and incorporeal hereditaments), or any estate or interest in land, whether effected by deed or will or otherwise, and whether by one or several instruments; and a settlement for the purposes of the Act means an instrument or instruments under or by virtue of which the land "stands for the time being limited to or in trust for any persons by way of succession;" but by sub-s. 4, the question whether the land is settled for the purposes of the Act is to be "governed by the state of facts and the limitations of the settlement at the time of the settlement taking effect." This definition closely follows that of the Settled Estates Act, 1877, and the words "taking effect" in sub-s. 4, evidently mean as in that Act, "coming into operation" (see 3 Dav. Prec. p. 523, note). See also *Vine v. Raleigh*, [1896] 1 Ch. 37; *Bates v. Kesterton*, [1896] 1 Ch. 159; *Re Pocock and Prankerd*, [1896] 1 Ch. 302. By s. 4 of the Act of 1890, any instrument whereby a tenant for life in consideration of marriage or by way of family arrangement makes an assignment of or charge upon his estate or interest under the settlement (not being a security for money advanced), is to be deemed one of the instruments creating the settlement, and not an assignment for value within s. 50 of the Act of 1882 (as to which see *infra*), *Re Ailesbury Settled Estates*, 42 W. R. 45. This

Act of
1890.

would apply to the common case where the tenant for life charges his life estate, on a re-settlement or otherwise, with a provision for his eldest son.

Where interests taken under a settlement have afterwards been made the subject of derivative settlements, the original settlement alone, so long as it lasts, is the settlement for the purposes of the Act (*Re Knowles*, 27 Ch. D. 707; *Re Wright's Trustees and Marshall*, 28 Ch. D. 98); and in the common case of a settlement by father and son, after a disentail, preserving the father's old life estate, it has been considered that the two settlements are for all the purposes of the Act distinct (except in a case coming within s. 4 of the Act of 1890); and that as soon as the original settlement is spent and there ceases to be a statutory tenant for life thereunder, the re-settlement alone becomes the settlement, so that any family charges subsisting under the old settlement can no longer be overridden by an exercise of the statutory powers. However, in the recent case of *Re Ailesbury and Iveagh*, [1893] 2 Ch. 345, a different view was taken, and it was considered, having regard to the statutory definition of "settlement," that a series of settlements and resettlements of entailed estates by father and son of the usual type constituted together a "compound" settlement, although the then subsisting limitations arose under the last settlement alone (those of the prior settlements having run out), on the ground that, having regard to s. 2, sub-s. 4, the point of time to be looked to in determining the question whether there was a settlement in each case was the date of the settlement and not the present time; and it was accordingly held that upon trustees of the compound settlement being appointed by the Court to receive the purchase-money, the sale and conveyance by the tenant for life under the last re-settlement would overreach all the family charges which were subsisting under the prior settlements. It will be noted that this decision only applies where at the time of the re-settlement there was a "succession of estates" still subsisting under the prior settlement which was kept alive, and not to a case where the fee simple had previously come into possession; since in the latter case there never was a "succession of estates" under the two settlements taken together. The decision in *Re Ailesbury and Iveagh* has been much convassed, and it is not safe to act upon it. See *Wolstenholme*, C. A. 289; 37 Sol. J. 336. Notwithstanding the existence of such a compound settlement, it is beyond question, having regard to the previous decisions on the Act and the uniform practice, that the original settlement, so long as there is a tenant for life thereunder, remains the only settlement; and also that the second settlement, when the limitations thereof have come into possession, may still, even if the decision is correct, at the option of the tenant for life, be treated as the only settlement, so that capital money may be paid to the trustees of that settlement, although in that case the old family charges would not be overreached; or in order to overreach those charges, (according to *Re Ailesbury and Iveagh* if it applies) the purchase-money may be paid to trustees appointed by the Court of the compound settlement. It seems clear that s. 4 of the Act of 1890 would not have the effect of creating a compound settlement, so as to affect the powers of the trustees under the original settlement; a charge coming within that clause being in the same position as if it had been contained in the original settlement, and the enactment having the same effect as the overreaching clause commonly inserted in re-settlements by father and son.

Where two estates are settled by different instruments to the same uses the question arises whether the two instruments constitute one settlement

Derivative
settle-
ments.

Compound
settle-
ments.

Settlement
of two
estates by

different
instru-
ments.

according to the definition. They appear to be so far distinct that capital money arising under the first settlement cannot be applied as capital money arising under the second settlement; on the other hand they so far constitute one settlement that capital money arising under the second settlement can be applied as capital money arising under the first settlement in cases where the uses of the second settlement are declared by reference to the first settlement, *Re Mundy*, [1891] 1 Ch. 399, and where though the uses are not declared by reference and although originally different have in the event become identical, *Re Byng*, [1892] 2 Ch. 219. As to the question whether lands settled to different uses by the same instrument are comprised in different settlements within the meaning of the Act, see *Re Stamford*, 43 Ch. D. 84; *Re Frews*, [1894] 1 Ch. 7.

Act cannot
be ex-
cluded.

The Act cannot be excluded or controlled by the settlement, s. 51; and has been held to override a previous private Act (*Re Chaytor*, 25 Ch. D. 651); and the statutory powers of the tenant for life, as they override the settlement, are not affected by an action for the administration of the trusts by the Court (*Cardigan v. Curson Howe*, 30 Ch. D. 531).

Powers
given to
owner in
possession.

The powers of the Act are vested in the tenant for life, as defined by s. 2 (6); namely, the person beneficially entitled to the "possession or receipt of the rents and profits" of the settled land, for his life; and any other limited owner as defined by s. 58, where his estate is "in possession." "Possession" in ss. 2 (5) and 58 is to be read as contra-distinguished from "remainder" or "reversion" (*Re Atkinson*, 31 Ch. D. 577); so that it is immaterial whether the tenant for life is in possession personally or by his trustee, or (in the case of an infant) his guardian (*Re Morgan*, 24 Ch. D. 114, 116); or by a receiver appointed by the Court. But a minority clause by which the trustees are empowered to apply at their discretion all or any part of the rents for the maintenance of an infant, and to accumulate the rents retained for the benefit in certain events of other persons, would prevent the infant from being entitled "to the possession or receipt of the rents and profits," see *Re Atkinson*, *ubi sup.*, *Re Horns*, 39 Ch. D. 84; and a tenant for life whose estate is subject to an out and out trust for accumulation of the whole rents during a fixed term so as to be added to corpus, has not an estate in possession within the Act, *Re Strangways*, 34 Ch. D. 423, but if he would be entitled to the surplus rents, if any, he is in possession within the meaning of the Act though there are none, *Re Jones*, 26 Ch. D. 736; *Re Clitheroe*, 28 Ch. D. 378, 31 *ib.* 135. See also *Vine v. Raleigh*, [1896] 1 Ch. 37.

Reversion.

The definition of tenant for life clearly excludes the application of the Act to a settlement of a reversion, until it falls into possession.

Powers not
affected by
incum-
brances.

The powers of the tenant for life are not affected by the existence of incumbrances on the settled land, or on his life estate, whether created by the settlement or otherwise (s. 2 (7), and s. 50 (1, 4)), e.g., a mortgage, or a charge of jointure or portions secured by a term or otherwise under the same or a prior settlement (see as to the latter, s. 20 (2)); although the whole of the rents may be absorbed by expenses and interest (*Re Jones*, 24 Ch. D. 583; 26 Ch. D. 736). So also a trust for accumulation of the rents for discharging incumbrances, which may at any time cease or be put an end to by the tenant for life by paying off the charges, does not affect his powers (see s. 58, sub-s. 1 (vi.); *Re Clitheroe*, 28 Ch. D. 378; 31 Ch. D. 135; *Williams v. Jenkins*, [1893] 1 Ch. 700); and it follows that his powers would not be affected by a mortgagee taking possession.

Incumbrances.

7th life cannot assign or release or contract not to exercise his

powers (s. 50 (1, 2)); but he cannot exercise them to the prejudice of an assignee or incumbrancer on his life estate without the latter's consent, with a saving as to ordinary rack-rent leases (s. 50 (3)); (see *Re Sebright*, 33 Ch. D. 429); but this is subject to the modification made by s. 4 of the Act of 1890 (see above); as to a person having merely a rentcharge, see *Re Ailesbury and Iveagh*, [1893] 2 Ch. 345, discussed, 37 Sol. J. 336.

The Act (s. 2 (5), and s. 58), applies to the following limited owners when entitled in "possession," viz., 1. A tenant for his own life. 2. A tenant in tail. 3. A tenant in fee simple subject to an executory gift or limitation over in any event. 4. A person entitled to a base fee, including a tenant for life thereof, *Re Morshead*, W. N. 1893, 180. 5. A tenant for years determinable on life other than a lessee at a rent. 6. A tenant *pur autre vie*, with the like exception. 7. A tenant for his own or any other life, or for years determinable on life, whose estate is liable to cease during the life or to be defeated by an executory gift over (see *Re Morgan*, 24 Ch. D. 114, and the peculiar case of *Re Hazle*, 26 Ch. D. 428, 29 Ch. D. 78), or is subject to a trust for accumulation (see *Re Clitheroe*, 28 Ch. D. 378; 31 Ch. D. 125; *Re Strangways*, 34 Ch. D. 423). 8. A tenant in tail after possibility of issue extinct. 9. A tenant by the curtesy (see the Amendment Act of 1884, s. 8); and 10. A person entitled to the rents under a trust for payment thereof to him during his own or any other life, whether subject to expenses of management or not, or until sale or until forfeiture on bankruptcy or other event, *Re Pocock and Prankerd*, [1896] 1 Ch. 302.

life cannot assign powers.

To what limited owners the Act applies.

Where there are two or more persons entitled concurrently as tenants in common or joint tenants or otherwise, they together constitute the tenant for life, s. 2 (6). In *Re Atkinson*, 30 Ch. D. 605; 31 Ch. D. 577, it was held that the common trust creating a life estate protected against bankruptcy, &c., by means of a discretionary trust for the application of the income for the benefit of all or any exclusively of specified objects for the time being in esse, did not under this clause or s. 58 constitute the objects *pro tem.* of the trust a compound tenant for life within the Act.

As to persons entitled concurrently.

The Act applies to a settlement of an undivided share, s. 2 (10, i), and where the settlement comprises an undivided share, or where under the settlement the land has come to be held in undivided shares, the tenant for life of a share may join in the exercise of the statutory powers with the owners of or persons having power of disposition over the other shares, s. 19. In *Re Collinge*, 36 Ch. D. 517, where under the settlement the land had come to be held in undivided shares, one of which remained in settlement, it was held that the tenant for life of the latter share could not sell without the concurrence of the owner of the other; but this clearly could not apply to the case of a settlement originally comprising only an undivided share, the other share being held under a distinct title. It may here be mentioned that where there are several concurrent owners entitled in possession under the same settlement, it is conceived that they must all join in an application for sale under the Settled Estates Act, 1877 (see s. 23), the dispensing powers given by ss. 25-28 having reference only to remaindermen (see s. 24); and that the orders in *Re Dryden*, 50 L. J. Ch. 752, and *Re Thorp*, W. N. 1876, 251, were therefore *ultra vires*.

As to undivided shares.

A tenant for life (which in the Act and in the following remarks includes other limited owners having the powers of one) is by the Act invested with very large powers of selling "the land or any easement right or privilege over or in relation to the same" (s. 3 (i)); which includes power to create

Power of sale.

and sell to an adjoining landowner an easement or right over the settled land; but it is a question whether it authorises the release and extinguishment of an existing easement or right held with and annexed to the settled land, over adjoining land.

Sale for
rent-
charge.

As to sales or grants in fee for a rentcharge, see s. 10, and the Act of 1890, s. 9, and the Small Holdings Act, 1892, 55 & 56 Vict. c. 31, ss. 12, 13.

Enfran-
chisement.

The power of sale includes power to enfranchise copyholds or freeholds held of a settled manor (s. 3 (ii)); and see the Copyhold Act, 1894, repealing and by ss. 26, 34, 35 replacing the Copyhold Act, 1887, ss. 24, 25, 26, as to expenses and enabling the lord of the manor in certain cases to give receipts for the compensation money although his estate in the manor may be only a limited one.

Reserva-
tions and
restric-
tions.

The sale must be at the best price that can reasonably be obtained (s. 4 (1)); but as to sales for purpose of artisans' dwellings, see 53 & 54 Vict. c. 70, s. 74, and as to small holdings, see the Small Holdings Act, 1892, ss. 12, 13. The Act gives the usual subsidiary powers (s. 4 (3, 4, 5)), and authorises the making of reservations or imposition of restrictions "with respect to building on or other user of the land, or mines or minerals, or for the purpose of the more beneficial working thereof or with respect to any other thing to be made binding so far as the law permits by covenant, condition, or otherwise, on the tenant for life and the settled land or any part thereof, or on the other party and any land sold to him" (s. 4 (6)); and, on a sale for building purposes, to appropriate and lay out roads, &c., with sewers, &c. (s. 16); and also power to sell the surface without the mines and minerals (as defined by s. 2 (10, iv.)); and *vice versa*, with or without a reservation or grant of powers of working, easements, &c. (s. 17 (1)).

Timber.

On a sale of an estate with the timber on it, the tenant for life, though empowered to cut and sell timber for his own use, is not entitled to the price of the timber; *Re Llewellyn*, 37 Ch. D. 317, above p. 248, note (b).

Mansion
house, &c.

"The principal mansion house and the pleasure grounds and park and lands usually occupied therewith," cannot be sold or exchanged without the consent of the "trustees of the settlement" (as defined by the Act; see *infra*), or an order of Court (see s. 10 of the Act of 1890, substituted for s. 15 of the original Act); but where the house is usually occupied as a farmhouse, or the house and grounds, &c., usually occupied therewith do not exceed 25 acres, the house is not to be deemed a principal mansion house. As the Act overrides the settlement, the Court may order a sale of the mansion house, though expressly negatived by the settlement (*Re Brown*, 27 Ch. D. 179). As to the considerations which should guide the Court in consenting to a sale of the mansion house, &c., or the reverse, see *Bruce v. Ailesbury*, [1892] 1 Ch. 506, A. C. 356. The word "principal" does not of course imply that there should necessarily be a second mansion or house. The clause would in many cases prevent the sale under the Act, unless the requisite consent were obtained, of outlying parts of the estate intermixed with small portions of wood or coppice usually kept in hand and "occupied with" the mansion. It would also apply to land which has been usually occupied with the mansion, though at the time of sale let to a tenant. See the form of order authorising the sale of the mansion house, &c., Seton, 1519; and see *Re Spurway*, 10 Ch. D. 230.

Power of
tenant for
life to
convey.

By s. 20 (1) full power is given to the tenant for life to execute the necessary conveyance to effectuate the sale, or the creation of the easement or right sold, "for the estate or interest the subject of the settlement or for any less estate or interest," "including copyhold or customary or leasehold

land vested in trustees ;" which dispenses with the necessity for the concurrence of the trustees as to the legal estate in copyholds or leaseholds vested in them, and also doubtless notwithstanding the absence of any express mention of that case, as to the legal estate in freeholds so vested, having regard to the generality of the power to convey for "the estate the subject of the settlement." It is also conceived that the power to convey would extend to a legal estate outstanding in the settlor of which he has expressly declared himself a trustee for the purposes of the settlement, as in the case of copyholds which he has covenanted to surrender with the usual declaration of trust until surrender; but not to a legal estate outstanding in a trustee who has not declared himself such for the purposes of the settlement, as such a legal estate is not "the subject of the settlement;" but if a legal estate, outstanding at the date of the settlement, is afterwards got in and conveyed to the uses thereof, the settlement and the conveyance of the legal estate would, as it seems, thenceforth together constitute the settlement under s. 2 (1), so that the conveyance of the tenant for life would pass the legal estate.

By s. 20 (2) the conveyance of the tenant for life is effectual to pass the land conveyed, or the easements or rights created, discharged from the limitations, powers, and provisions of the settlement, and from all estates, interests and charges subsisting or to arise thereunder, but subject to estates and charges having priority to the settlement, or which have been conveyed or created for securing money actually raised, and leases, easements, &c., previously granted; so that the conveyance operates in this respect in a manner similar to a conveyance under the ordinary power of sale, so as to overreach all the estates, charges and powers of charging subsisting under the settlement, other than mortgages or charges created under the powers or trusts thereof for money actually raised, and leases, &c.; but not those subsisting under a prior settlement; but as to "compound" settlements see above. A doubt has been suggested upon the words "subject to all such estates and charges as have been conveyed or created for securing money actually raised," as to whether the conveyance would not be subject to a mortgage created by a remainderman on his estate (the case of an incumbrance by the tenant for life on his life estate being expressly provided for by s. 50). But this construction, which would render the Act unworkable, and would involve the absurdity that the estate of a purchaser from the remainderman would be overridden by the conveyance (*Wheelwright v. Walker*, 23 Ch. D. 752), while that of a mortgagee would not, is not regarded in practice as tenable, and does not appear to be legitimate; see s. 50 (3), which seems to imply that, but for that provision, the conveyance of the tenant for life would override a mortgage of his life estate, and, *pari ratione*, a mortgage by a remainderman. It seems that the above words of exception should be read as controlled by those which precede, so that the estates and charges excepted are only those created or conveyed under the "limitations, powers, or provisions" of the settlement, i.e., securities for money charged by the settlement itself, or under the trusts of terms or powers contained in it. It will be observed that a term created by the settlement for raising money, e.g., to pay debts, although preceding the estate of the tenant for life, would be overridden by the conveyance.

To what estates and interests conveyance is subject.

By s. 20 (3) in the case of copyhold or customary land the conveyance passes the right to admittance without any surrender. As to fines, see *Re Naylor*, 34 Ch. D. 217.

Copyholds.

It is important to remember that the conveyance of the tenant for life

Operation

of convey-
ance.

does not operate like a conveyance under the ordinary power of sale, by appointment of the use with the aid of the Statute of Uses, but is a statutory conveyance of the estate similar to a conveyance by a limited owner under the Lands Clauses Consolidation Act, 1845; so that on the seisin so passing in the case of freeholds uses may be declared in the ordinary way (see s. 20 (1)), *e.g.*, to the uses of a settlement.

As to trust-
tees being
parties.

If the purchase-money is paid into Court, the trustees need not be parties, unless for the purpose of testifying their consent to the sale of the mansion-house, &c., or giving a covenant against incumbrances, or for production of muniments; for none of which purposes, however, are they compellable to join unless they think fit. Even if the money is paid to the trustees they need not and are not bound to be parties, an endorsed receipt by them in the usual form for the purchase-money being sufficient; and this would be an authority to the solicitor producing the deed to receive the money under the Conv. Act, 1881, s. 56; and the Trustee Act, 1893, repealing and (by s. 17) re-enacting the Trustee Act, 1888, s. 2: see p. 375, note.

Shifting
of incum-
brances.

The tenant for life is also empowered to transfer an incumbrance, which includes a rent charge created under the Improvement of Land Act, 1864, *Re Strafford and Maples*, [1896] 1 Ch. 235, affecting the land sold to any other part of the settled estates with the consent of the incumbrancer; see ss. 5 and 24 (4, 5, 6); and a precedent of a deed for this purpose, Vol. II., MORTGAGES; also to raise money to pay off incumbrances (Settled Land Act, 1890, s. 11) by mortgage of the settled land.

Payment
and invest-
ment of
purchase-
money.

The purchase-money is by s. 22 (1), to be paid at the option of the tenant for life, which, if exercised in good faith, cannot be controlled by the Court (*Re Coleridge*, [1895] 2 Ch. 704), either to the "trustees of the settlement," whose receipt (s. 40), whether they were appointed by the settlement or by an order of Court under s. 38 (*Cookes v. Cookes*, 34 Ch. D. 498), is a good discharge (subject to s. 39, enacting that capital money under the Act is not to be paid to fewer than two trustees, unless the settlement authorises the receipt of money by one trustee), or into Court. It has been considered that the option given to the tenant for life to direct payment into Court cannot be exercised unless at the time of completion there are trustees (*Hatten v. Russell*, 38 Ch. D. 334; at p. 345). It was held that if the money was paid into Court it would not afterwards be paid out to the trustees (*Cookes v. Cookes*, *ubi sup.*); but this has been altered by the Act of 1890, s. 14. The money is to be reinvested or applied in some or one of the modes provided by s. 21, as extended by subsequent legislation, which includes the discharge of incumbrances, the purchase of land, and the payment of costs (see s. 21, sub-s. ii., vii., x.); and in the payment of estate duty (Finance Act, s. 9, sub-s. 7, and *infra*, p. 476, note); the investment or application of the money if paid to the trustees, being required to be made according to the direction of the tenant for life, and if paid into Court, on his application or the trustees; s. 22 (2, 3). As to the costs of an attempted sale, see *Re Smith*, [1891] 3 Ch. 65. For a form of direction by the tenant for life to the trustees to pay the purchase-money and costs, see *infra*, DIRECTION AND CONSENT.

Contracts.

Full powers are given by s. 31 to a tenant for life, to enter into and vary contracts for sale, &c., which are to be binding on, and may be carried into effect by his successors in title; and by the Act of 1890, s. 6, this is extended so as to enable a tenant for life to make a conveyance for giving effect to a contract made by any previous owner.

Who are
trustees for

By the Act of 1882, s. 2 (8), the persons, if any, who are for the time being under the settlement trustees with power of sale of the settled land,

or with power of consent to or approval of the exercise of such a power of sale, or if there are no such trustees then the persons who are by the settlement declared to be trustees thereof for the purposes of the Act are to be the trustees for those purposes. This definition has been extended by the Act of 1890, s. 16, by enacting that where there are for the time being no trustees of the settlement within the meaning of the Act of 1882, then the following persons shall for the purposes of the Act be trustees of the settlement, namely: (i.) the persons, if any, who are for the time being under the settlement trustees with power of or upon trust for sale of any other land comprised in the settlement and subject to the same limitations as *the land to be sold*, or with power of consent to or approval of the exercise of such a power of sale; or if there be no such persons, then (ii.) the persons, if any, who are for the time being under the settlement trustees with future power of sale, or under a future trust for sale, of *the land to be sold*, or with power of consent to or approval of the exercise of such a future power of sale, and whether the power or trust takes effect in all events or not. It had previously been decided under the original Act that the power of sale must not be a deferred power (*Wheelwright v. Walker*, 23 Ch. D. 752; *Re Horne*, 39 Ch. D. 84). As to the case where the power is deferred to the death of the tenant for life, who is himself one of the trustees, see 37 Sol. J. 109. The words italicized in the above clause in the Act of 1890, raise a doubt as to whether it is not confined to the case where a sale is pending, so that the trustees would not be such for the purpose of any lease or exchange, or any other dealing except a sale: a restriction which may give rise to great doubt and difficulty. See further as to what amounts to a power of sale (*Re Garnett*, 25 Ch. D. 595). It is abundantly clear from the wording of the above definitions that trustees with power of sale are within them, although the power is subject to a restriction as to consents: *Constable v. Constable*, 32 Ch. D. 233 (where, however, the decision was not rested on the right ground), and the case of *Re Johnstone*, 17 L. R., Ir. 172, is plainly untenable. Assuming that trustees with power of sale for a limited purpose, e.g., to pay debts or legacies, would be trustees for the purposes of the Acts while the power is subsisting, it is conceived that they would cease to be such when the purpose of the power is satisfied, a case of some difficulty. It is also difficult to see what is the effect of a settlement constituted by two instruments, each with a different set of trustees, as in *Re Mundy*, [1891] 1 Ch. 399.

By section 38 of the Act of 1882, if there are at any time no trustees within the meaning of the Acts, or where it is expedient for the purposes of the Acts that new trustees be appointed, the Court is empowered to appoint trustees who, and the survivors and survivor of them, while continuing to be trustees or trustee, are for the purposes of the Acts to be the trustees or trustee. Where there are trustees of the settlement, but for want of a power of sale they are not trustees within the Acts, it is desirable that the existing trustees should be appointed by the Court, for the purposes of the Acts, to avoid possible inconvenience arising from the existence of two sets of trustees. As to the practice of the Court in appointing trustees under s. 38, see *Re Kemp*, 24 Ch. D. 485; *Re Wright*, *ib.*, 662; *Re Harrop*, *ib.*, 717. As to "compound" settlements, see above. As to the subsequent appointment of new trustees, see the Trustee Act, 1893, s. 47, above, p. 103.

Appoint-
ment of
trustees by
Court.

The Act, ss. 41—43, contains full provisions for the indemnity and reimbursement of the trustees.

Tenant for life in a fiduciary position.

The tenant for life is in the exercise of his statutory powers placed by s. 53 in a fiduciary position, as to which see *Wheelwright v. Walker*, *ubi sup.*; *Thomas v. Williams*, 24 Ch. D. 558; *Re Ailesbury*, [1892] 1 Ch. 506; but by s. 54 purchasers dealing *bona fide* are protected; see *Hatten v. Russell*, 38 Ch. D. 334.

Power of tenant for life to sell to or buy from himself.

Under the old law there was nothing in the position of a tenant for life to prevent him from selling to or buying from the trustees (*Howard v. Ducane*, T. & R. 81; *Dicconson v. Talbot*, 6 Ch. 32; *Vaizey on Settlements*, 588). But under the Settled Land Act the case is different, as the tenant for life would in either case be both vendor and purchaser (see 33 Sol. J., pp. 3, 23); this, however, is now provided for by the Act of 1890, s. 12, under which where a tenant for life is in such a twofold position (on a sale, exchange, or partition, but not a lease), the trustees are to stand in his place for the purpose of exercising the statutory powers.

Powers of Act cumulative.

By s. 56 the powers of the Act are made cumulative, and any concurrent powers contained in the settlement and exercisable by the tenant for life or the trustees, are kept alive, but so that in case of conflict the provisions of the Act are to prevail; and the consent of the tenant for life is made necessary to the exercise by the trustees of the settlement of any such power; but by the Act of 1884, s. 6 (2), where there are two or more tenants for life, the consent of one only is necessary. As to the effect of s. 56, see *Re Duke of Newcastle*, 24 Ch. D. 129; *Clarke v. Thornton*, 35 Ch. D. 307, at p. 315.

Apportionment of purchase-money on sale of lease or reversion.

S. 34 contains a provision (similar to that in the Lands Clauses Consolidation Act, 1845, s. 74, and the Settled Estates Act, 1877, s. 37), enabling the trustees or the Court, in the case of a sale of a lease, or of a reversion expectant on a beneficial lease, to deal with the purchase-money so as to adjust the rights of the beneficiaries, and prevent the tenant for life being injured in the former case, or benefited in the latter by the sale: see *Cottrell v. Cottrell*, 28 Ch. D. 628. Where in such a case the settlement contains an express power of sale, with the usual provisions for reinvestment of the purchase-money, not providing for this, it would be to the interest of the tenant for life (having regard to that enactment), in the case of a lease to sell under the statutory power, and in the case of a reversion under the express power; in a case of *Willats v. Flint*, decided in Chambers, where the property had been sold under the Act, it was considered that the Court was bound to apply s. 34, although not in terms directory, and although if the sale had been made under the express power, that provision would not have been applicable.

Notice to trustees before sale, &c.

The original Act contains a requirement (s. 45), that the tenant for life shall give one calendar month's notice by registered letter to each of the trustees, and also to their solicitor, if any is known to him, before making any sale, exchange, partition, or lease under the Act, or a contract for the same; with a proviso that "at the date of notice given the number of trustees shall not be less than two, unless a contrary intention is expressed in the settlement" (see *Re Garnett*, 25 Ch. D. 595, where such an intention was inferred in the case of a settlement before the Act authorising a sole trustee to act generally); but a person dealing in good faith with the tenant for life is not concerned to inquire respecting the giving of the notice (*Mogridge v. Clapp*, [1892] 3 Ch. 383). This requirement as to notice having proved exceedingly troublesome has been mitigated by the Amendment Act of 1884, s. 5, which provides that the notice may be a general one

Act of 1884, s. 5, as to notice.

(reversing *Re Ray*, 25 Ch. D. 464); and enables any trustee to waive notice, either in the particular case or generally; and to accept less than a month's notice; but it is not clear whether a sole trustee, notice to whom would not have been sufficient under the original Act, can waive notice. Power to waive notice to the solicitor of the trustees is no doubt implied, otherwise the provision would be nugatory. The necessity for notice in the case of ordinary rack-rent leases (discussed, 37 Sol. J. 76) is dispensed with by the Act of 1890, s. 7. The notice, unless waived, should be given, although the trustees are consenting parties. The requirement as to notice is not of course to prevent clashing where the trustees have concurrent powers, as such powers are by s. 56 (as amended by the Act of 1884, s. 6), not exerciseable without the consent of the tenant for life, or one of several, but to enable the trustees to intervene in case of an improper dealing, for which purpose the tenant for life is by the Act of 1884, s. 5 (2), required on request to furnish particulars of the proposed dealing; and any question could no doubt be referred to the Court under s. 44 of the Act of 1882. The want of a proper notice does not affect a purchaser unless he has knowledge of the fact, at any rate if he ascertains that at the time of completion there are trustees to whom notice might have been validly given: *Duke of Marlborough v. Sartoris*, 32 Ch. D. 616; *Hatten v. Russell*, 38 Ch. D. 334; *Mogridge v. Clapp*, [1892] 3 Ch. 382; the case of a lease, where the lessee was held to be protected though there were no trustees (see the discussion in the judgments).

Purchaser
—how
affected by
want of
notice.

By s. 60, if the tenant for life is an infant, or if an infant if of full age would be a tenant for life, the powers of a tenant for life under the Act may be exercised on his behalf by the "trustees of the settlement," and "if there are none," then by persons appointed by the Court on the application of the infant's guardian or next friend. If there are trustees of the settlement within the Act, whether appointed by the settlement or the Court, they are necessarily the persons to exercise the powers on behalf of an infant, and no other person can be appointed for the purpose (*Re Dudley*, 35 Ch. D. 338); and if such an appointment is made, inasmuch as the powers of the person appointed would, if trustees were afterwards appointed, *ipso facto* cease, it follows that there cannot in that case be trustees to whom notice may be given under s. 45, and to receive the purchase-money under s. 22; and the purchase-money must therefore be paid into Court (*Re Dudley*, *ubi sup.*). The proper course where that is not desired, is simply to get trustees appointed, who will be able, without express authority from the Court, to sell under s. 60, and give a discharge for the purchase-money under s. 22; but if an action be pending, the sanction of the Court to a sale must be obtained (either generally or by confirming a provisional contract): see *Re Price*, 27 Ch. D. 552; *Re Staines*, 33 Ch. D. 172; and a sale out of Court may be authorised (*Re Price*, *ubi sup.*).

Infant
tenant for
life.

By s. 59, the provisions of the Act are extended to the case of an infant "seised of or entitled in possession," so that the infant is to be deemed tenant for life thereof; and the provisions of s. 60 are therefore applicable. This would apply to an infant seised in fee of freeholds or copyholds, or absolutely entitled to leaseholds. The case where the estate of the infant is subject to a gift over on death, under age or otherwise, comes under s. 58 (i, ii.), coupled with s. 60; see *Re Morgan*, 24 Ch. D. 114. In applying the Act to the case of an infant absolutely entitled, the instrument under which

Infant
absolutely
entitled.

his title arises (or, where he takes by descent, under which his ancestor's title arises), although not coming within the definition in s. 2, must necessarily be deemed the settlement. The similar question as to a tenant by the curtesy has been dealt with by the Act of 1884, s. 8. The Settled Estates Act, 1877, had, previously, by the Conv. Act, 1881, s. 41, been extended to infants seised in fee; see as to that enactment, *Liddell v. Liddell*, 52 L. J. Ch. 207, 31 W. R. 238; *Re Sparrow*, [1892] 1 Ch. 412.

Tenant
for life
married
woman.

In the case of the tenant for life being a married woman, by s. 61, if she is entitled for her separate use under the old law, or as her separate property under the Married Women's Property Act, 1882, she can act alone as a *feme sole*; and a restraint on anticipation is no impediment (s. 61 (6)); otherwise, i.e., where she was married and the settlement was made prior to 1883, and she is not entitled for her separate use, she and her husband together have the powers of a tenant for life, and his concurrence is necessary. If the married woman is an infant, the effect of s. 61 (4), is to make the provisions in s. 60 as to infants applicable, with the modification that the husband must concur where his concurrence would have been necessary if the wife had been of age.

Tenant
for life
lunatic.

In the case of the tenant for life being a lunatic so found by inquisition, the powers are exercisable by the committee of the estate, s. 62: see *Re Ray*, 25 Ch. D. 464; *Re Gaitskell*, 40 Ch. D. 416. The Act does not provide for the case of a lunatic not so found. But as to leasing powers, see the Lunacy Act, 1890 (53 Vict. c. 5), ss. 120 (h), 122; and note that that Act applies whether the lunatic is so found or not, see s. 116.

Settle-
ments by
way of
trust for
sale.

The original Act applied to settlements (past or future) by way of trust for sale (s. 63), whether the proceeds of sale are liable to be reinvested in land or not (the marginal heading of the section is in this respect erroneous); the powers of the Act being in that case vested in the tenant for life (as defined by that section) of the proceeds of sale or the rents until sale, or in the case of concurrent owners (as so defined) in such persons together; the clause was held not to apply to a deferred trust for sale (*Re Horne*, 39 Ch. D. 84); but see now the Act of 1890, s. 16, *supra*. As to the effect of a sub-settlement, see *Re Earle*, 24 Ch. D. 144. The enactment in s. 63 having been found very inconvenient by reason of its necessitating (by s. 56) the consent of the statutory tenant or tenants for life to sales and other dealings by the trustees under the trust, has been amended by the Act of 1884, which by s. 6 (1), dispenses with the necessity for any such consent, and by s. 7, provides that the powers conferred by s. 63 are not to be exercised without the leave of the Court; and the Court may, on the application of the tenant or tenants for life, in any case in which it thinks fit, give leave to exercise all or any of the powers, and the order is to name the person or persons to whom leave is given, who shall be deemed the proper person or persons (as to giving this leave, see *Re Harding*, [1891] 1 Ch. 60; *Re Bagot*, [1894] 1 Ch. 177, Seton 1531); and so long as the order is in force the powers vested in the trustees for the like purpose are suspended, subject to a provision requiring the order to be registered as a *lis pendens* for the protection of persons dealing with the trustees.

Act of 1884
as to set-
tlements
by trust
for sale.

See the Rules of December, 1882; Wolstenholme C. A. 409; W. N. 1882.

Settled
Estates
Act, 1877.

The Act leaves little occasion for recourse to the powers of the Settled Estates Act, 1877, though applications under that Act are still occasionally made, *ante* p. 324, note (a). It is also to a large extent acted on so as to supersede sales, &c., under express powers, which are only resorted to in

exceptional cases ; but in the case of trusts for sale, especially under wills, convenience is usually in favour of the trustees acting.

Generally on the subject of this note, see Wolstenholme C. A. ; Hood and Challis on the Conv., &c. Acts ; Seton, 1502 *et seq.*

XVIII.

CONVEYANCE of FREEHOLDS by TENANT FOR LIFE under PREC. XVIII.
the SETTLED LAND ACTS. ADAPTED to a sale by AUCTION
or PRIVATE CONTRACT. VARIATIONS where the TRUSTEES
are appointed by the COURT, where the PURCHASE
MONEY is paid into COURT, for a SALE of the MANSION
HOUSE or land occupied with it, and where a RIGHT OF
WAY is RESERVED (a).

PARTIES, A., tenant for life, 1 ; B. & C., trustees, 2 ; D., purchaser,
3: WHAS by an indre of settlemt dated, &c., or, "the will
dated, &c., & proved on, &c., of X., of, &c., deced," the hds Recitals.
hby assured [togr with other hds] were conveyed & settled to Settlement.
the use of the sd A. for his life, or "to uses under wch the sd A.
is now tenant for life in posson thof," or, "is now benefly
entled to the posson or rect of the rents & profits thof durg his
life," or set out the limons down to limon to A., "with remrs
over," & the sd settlemt [will] contains a power of sale of the
sd hds & premes thby settled exercisable by the sd trustees or the
survors or survivor of them with the consent, &c., or, "wch is
now vested in the sd B. & C. with the consent of the sd
A." or, "& the sd B. & C. & the survors & survivor of them
were thby appted trustees & trustee thof for the pposes of the Settled
Land Acts, 1882 to 1890," & add any further recitals necy to
show that A. is tenant for life or limd owner, & B. & C. trustees
within the Acts (b) ; AND WHAS the sd A. by virtue of the powers Agreement.

(a) See note on the Settled Land Acts, p. 456, *et seq.*, and as to the power of the tenant for life to convey, see p. 460. If the money is paid into Court the trustees need not be parties, but if it is paid to them, they usually are.

(b) If the settlement contains no appointment of trustees within the meaning of the Act, add, "AND WHAS at the date of the order next hereinafter recited there were not any trustees of the sd settlemt [will] for the pposes of the Settled Land Acts, 1882 to 1890 ; Variation where trustees are appointed by the Court.

PRINC. XVIII. vested in him under the Settled Land Acts, 1882 to 1890, has
 — agrd with the sd D. for the absolute sale to him of the sd hds
 hby assured & the inhance thof in fee simple in posson [subj
 to such reservon of a rt of way as is hinafter contd] for the
 sum of £—— (a); [*Recital introductory to covt for prodon of*

AND WHAS by an order of the Chancery Divon made by Mr.
 Justice — on the — day of — on the applicon of the
 sd A., the sd B. & C. were appted & they now are the trees of
 the sd indre of settlemt [will] for the pposes of the sd Acts.”
 See the Rules under the Act, Form XIX.; and above, p. 462, note.

Variations
 for sale of
 mansion-
 house, &c.

(a) If the principal mansion house, or land occupied with it is sold with
 the consent of the trustees, say, “AND WHAS the sd A., by virtue,
 &c., *as above*, has, with the consent of the sd B. & C., agrd,
 &c.” If the sale is with the approval of the Court, add, “AND WHAS by
 an order of the Chancery Divon made by Mr. Justice — on
 the — day of —, the sd A. was authorised, &c.,” recite
 order giving general authority to sell the mansion house, &c., see rules
 under the Act, Form VI.; or if a conditional contract was entered into,
 “AND WHAS by a mem of agrmt dated, &c., & made, &c.,
 the sd A. agrd with the sd B. subj to the approval of the
 Chancery Divon being obtained as hinafter mentd for the sale,
 &c.; AND WHAS by an order of the Chancery Divon made by
 Mr. Justice — on the — day of —, the sd condonal
 contract was approved & the sd A. was authorised to carry the
 same into effect.”

Variation
 where
 purchase
 money paid
 into Court.

A general authority to sell according to the form in the rules is of course
 to be preferred to a conditional contract confirmed by the Court, as the
 contract in the latter case becomes part of the title. If the money is paid
 into Court, add, “AND WHAS the sum of £—— was pd by the sd
 D. to the sd A. by way of deposit on the contract for the sd
 sale & pchase being entd into; AND WHAS in psuance of an
 order or orders of the Chancery Divon in that behalf the sum
 of £——, being the amt of the sd deposit less the sum of
 £—— deducted for the costs of paying in the same was on the
 — day of — pd by the sd A. into Ct to the credit of, &c.,
 AND the sum of £—— being the balce of the sd purchase-moy
 of £——, after deductg the sd deposit & the sum of £—— in
 respt of the costs of the paymt of such balce into Ct, was on
 the — day of — pd by the sd D. by the diron of the sd A.
 into Ct to the acct afsd.” See the S. L. A. Rules, 1882 (13).

As to
 recitals of
 notices.

As purchasers dealing bona fide are protected by s. 45 of the Settled Land
 Act, 1882, a recital that the notices required by that clause have been given

deeds, p. 374]; NOW THIS INDRE WITNETH that in psuance of the sd recited agrmt (b) & in conson of the sum of £—— now pd by the sd D. by the diron of the sd A. to the sd B. & C. as such trees as afsd (the rect whof they the sd B. & C. do hby acknowe (c), & the paymt whof in mner afsd the sd A. doth hby acknowe), the sd A. as benefl owner by virtue of the powers vested in him by the Settled Land Acts, 1882 to 1890, & of every or any other power enabl'g him in this behalf (d) doth hby grt & convey unto the sd D., *pcels*, p. 377 *et seq.* (e): To HOLD the same premes UNTO & TO THE USE of the sd D., his hrs & assns (f), subj't to the leases & tenancies affectg the sd

PRECED. XVIII.

Wit-
nesseth.Habendum
to pur-
chaser.

should not be inserted, but it should be made to appear that there were trustees to whom notice might have been given under that section, or who might have waived notice under the Settled Land Act, 1884, s. 5. If the settlement were since the Act and contains a provision that notices under that section shall not be necessary, this may be recited.

(b) If the money is paid into Court, say, "in conson of the respive sums of £—— & £—— makg togr £—— so pd into Ct as afsd by the sd D. (the paymt whof in mner afsd the sd A. doth hby acknowe) the sd A. as benefl owner, &c."

(c) If the trustees are not made parties, say, "the rect whof is intd to be acknowed by a mem endorsed on or written at the foot of these psnts & signed by the sd B. & C., & the 'paymt whof in mner afsd the sd A. doth hby acknowe."

(d) For a mansion house, &c., say, "with the consent (hby testified) of the sd B. & C.," or, "& with the approval of the Chancery Divon as appears by the hinbfe recited order of the —— day of ——."

(e) Under the Conv. Act, 1881, s. 63, the conveyance includes all the estate, legal or equitable, which the vendor has power to convey, i.e., which is the "subject of the settlement," see p. 391, note.

(f) The words "dischged from all the limons, powers & provons of the settlem't, & from all estes, intts, & chges sub-sistg or to arise thereunder," (following the language of the Settled Land Act, 1882, s. 20,) are sometimes inserted here, but are of course unnecessary.

On a conveyance under the ordinary express power in a settlement effected by revocation and appointment of the use, or under the Settled Estates Act, 1877, s. 22, which has a similar operation, the liability to the succession duty, see the Succession Duty Act, 1853, s. 42, payable under the settlement, is shifted from the land to the purchase-money and the investments thereof (*Re Warner*, 17 Ch. D. 711), and the effect of a conveyance under the Settled Land Act, as by s. 20 it passes the land discharged from the limitations of

As to
succession
duty.

PREC. XVII. respive premes : [*Add, if required, provo restrictg A.'s implied covts for title, p. 411, form II. ;*] [*Acknmt & undertakg by A. or acknmt by B. & C., as the case may be, as to munimts, p. 418.*] IN WITS, &c.

[*Schdle of Munimts.*]

XIX.

PREC. XIX.

CONVEYANCE of LEASEHOLDS by TENANT FOR LIFE under the SETTLED LAND ACTS, where the SETTLEMENT was by way of TRUST for SALE (a).

Recitals. PARTIES, A., tenant for life or limd owner, 1 ; B. & C. trees, 2 ; D., pchaser, 3 ; Recite the lease, p. 357, & devolon of title, if any,

the settlement, is the same, see 35 Solors. J. 273, and is so treated in practice.

Where, however, the sale is made after a death which creates a succession any unpaid instalments of succession duty are treated in practice as a charge on the property. See 35 Solors. J. 359. Where the liability to the duty arises under an instrument prior to and overruling the settlement under which the sale is made, it is generally considered that, notwithstanding *Dugdale v. Meadows*, L. R. 9 Ex. 212, 6 Ch. 501, the property sold remains liable to the duty. See 2 Dav. Prec. Pt. 1, 313.

Estate duty.

A sale made under a power, either express or statutory, necessarily passes the land free from Estate Duty under the Finance Act, 1895, becoming payable on the subsequent death of a tenant for life, as when that event occurs the property sold "will not pass." But the case is different when the sale is made after the death, as in that case under s. 9 (1) a rateable part of the duty becomes charged on the property "passing on the death."

Reserva-
tion of
right of
way.

Where a right of way is reserved to go with the settled estate, the habendum will be, "UNTO the sd D. & his hrs, *subjt to leases, &c.*, To THE USE that the sd A. & his succors in title under the hinbfe recited indre of settlemt [will] [*if the legal este is in the trees, say the sd B. & C.*], their hrs & assns, & his & their tenants shl & may for ever hrafter have full & free rt, &c.," see pp. 383, 384. As to the creation of easements by limitation of the use, see the Conv. Act, 1881, s. 62, above, p. 386, note.

For a form of consent to the sale by an incumbrancer on the life estate of the tenant for life, see DIRECTION AND CONSENT.

(a) See p. 456 *et seq.*, note, and as to trusts for sale, p. 466. For the variations where trustees are appointed by the Court for the purposes of the Act, where the purchase-money is paid into Court, and for a mansion house, &c., see the last Precedent, and the notes thereto.

to the settlor, p. 359: AND WHAS under or by virtue of an indre, dated, &c., & made, &c. [& of anor indre bearg even date thwith, & made, &c.], or, "the will of X., deced, dated, &c., & proved, &c.," the sd hds & premes became & are now vested in the sd B. & C., the psnt trees of the same indre [respive indres] or, "will," upon trust at any time with the consent in writg of the sd A. to sell the same or any pt or pts thof, & the sd A. is benefly entled to the posson or rect of the rents & profits of the same premes durg his life or until the same shl be sold, or, *recite the material pts of the deed or deeds of settlemt or will at length, & any subseqt events showg that A. is a limd owner, & B. & C. are trees for sale within the Act. Order of Ct under the Settled Land Acts authorisg A. to exercise the powers of the Acts, see p. 372: AND WHAS the sd A., by virtue of the powers vested in him under the Settled Land Acts, 1882 to 1890, & the hinbfe recited order of Ct, has agrd with the sd D., &c., recital of agreemt for sale, p. 370, form II.; [Recital introductory to cort for prodon of deeds, &c., p. 374]: NOW THIS INDRE WITNETH that in psuance, &c., conson, & rect, as in last Precedent, the sd A., as benefl owner by virtue, &c., as in last Precedent, doth hby assn & convey unto the sd D., pcels, p. 381, form XVII.; Habendum, p. 396, form XIV. [Provo, if required,*

PRBO. XIX.

Settlement
or will (b).

Agreement.

Wit-
nesseth.

Assign-
ment.

(b) If the land was purchased under the usual power in a marriage settlement or will of personalty, the recital may be, "AND WHAS by an indre dated, &c., & made, &c., the convee, the hds hby assured were limited to the use of the sd B. & C., their hrs & assns, upon the trusts by a certn indre of settlemt, dated, &c., & made, &c., or, 'the will of X., deced, dated, &c., & proved, &c.' decl'd concerng the hds thby authorised to be pchased with the trust moys thrunder or such of the same trusts as were then subsistg & capable of takg effect, being (amongst other trusts) for the sale of the sd hds by the sd trees with the consent of the sd A., & for paymt of the rents & profits thof until sale to the sd A. durg his life," or in the not uncommon case of the purchase having been made partly out of the husband's and partly out of the wife's fortune, "for the paymt of the rent & profits thof until sale as to pt to the sd A. durg his life, & as to the other pt to the sd E. durg her life for her separate use witht power of anticipon." In the latter case both A. and E. would be necessary conveying parties.

Variation
where land
has been
purchased
under
power to
invest in
land.

PREC. XIX. *restrictg A.'s implied covts for title, p. 411, form II., mutatis mutandis*; [*Cort, if required, by D. with B. & C. to pay rent, &c., p. 419, form I.*]: [*Acknmt & undertakg by A., or acknmt by B. & C. as to munimts, p. 418.*] IN WITS, &c.

[*Schdle of Munimts.*]

XX.

PREC. XX.

CONVEYANCE of COPYHOLDS and GRANT of a RIGHT OF WAY over adjoining freeholds under the SETTLED LAND ACTS, by a tenant for life under a will containing a CHARGE of DEBTS (a).

Recitals. *PARTIES, A., tenant for life, 1; B. & C., trees & exs, 2; D., purchaser, 3. WHAS X., of, &c., deced, by his will, dated, &c., after bequeathg certn legacies & chging his debts & legacies on his real este in aid of his psonal este, devised his freehd estes & hds, includg the hds over wch a rt of way is hby grted, to certn uses under wch the sd A. is tenant for life in posson thof, & the sd B. & C. are trees of the sd will with a power of sale over the sd hds & premes, exercisable with the*

As to effect of charge of debts or legacies.

(a) See note on the Acts, p. 456 *et seq.* and the variations to Precedent XVIII. Where the property is subject, under the will of the settlor (as in this case) or a prior owner, to an express or implied charge of debts or legacies, so as to create or imply a power of sale or mortgage in the executors or trustees to raise money for the purpose (as to which see 2 Dav. Prec., pt. 2, p. 471 *et seq.* note), it has to be considered whether the tenant for life can make a good title without the concurrence of the executors or trustees. If the settlement was made by the will itself it is conceived that being a floating charge it would be overreached by the conveyance to the purchaser under the S. L. Act, 1882, s. 20 (2); but if the will was prior to the settlement, this would not be so, see s. 20 (2, i). It is necessary in the latter and better in the former case that the executors or trustees should join in the conveyance to confirm the sale and give a discharge for the purchase money. The purchase money should in either case be paid to the executors or trustees of the will, which is in accordance with ss. 21 and 22 of the Act, as capital money is applicable thereunder in the first place in payment of claims paramount to the settlement, and subject thereto is payable to the trustees of the settlement; and their receipt is the only proper discharge to the purchaser even though the money is not in fact wanted to pay debts or legacies.

consent of the sd A., & the sd testor devised his copyhd hds, includg the copyhd hds hby assured to the use of the sd B. & C., & their hrs upon the like trusts, & subjt to the like powers & provons as were in & by the sd will decl'd & cont'd of & concerng the sd freehd hds, or as near thto as the different tenure of the ppty wd admit, & the sd testor appted the sd B. & C. exs of his sd will: *Death & probate*, p. 365, *admittce of trees*, p. 351, *form XI. (b)*; AND WHAS the sd A., by virtue of the powers vested in him under the Settled Land Acts, 1882 to 1890, has agrd with the sd D. for the sale & convce & grt to him of the copyhd hds hinafter desc'd & hby assured, & the inhance thof in posson accdg to the custom of the manor, & also of the rt of way hinafter grted, free from incumbrces, for the sum of £——: AND WHAS the sd B. & C., in whom as exs or trees of the sd will a power of sale or mtge of the hds thby devised for raisg moy for paymt of the debts & legacies of the sd testor is considered to be vested by virtue of his will, have at the reqt of the sd A., & to perfect the title of the sd D., agrd to join in these psnts for the ppose of confirmg the sd sale, & givg a dischg for the sd pchase moy as hinafter appears; [*Recital introductory to covt for prodon of deeds*, p. 374]: NOW THIS INDRE, &c., *pchase moy pd to B. & C.* “as exs & trees of the sd will,” see *Precedent XVIII.*, the sd A., as benefl owner, by virtue of the powers vested in him under the Settled Land Acts, 1882 to 1890, & of every other power enablg him in this behalf, doth hby with the concurrce of the sd B. & C. grt & convey unto the sd D., *copyhd pcels*, p. 377 *et seq.*; AND ALSO full & free liberty for the sd D., his hrs & assns, the owners & occupiers of the sd copyhd premes hby assured, *continue as at* p. 383, *form XXVIII.*, To HOLD the same free & dischg'd from the debts of the sd X., & the legacies bequed by his will UNTO & TO THE USE of the sd D., his hrs & assns, but as to the sd copyhd premes accdg to the custom of

PREC. XX.

Agreement
of execu-
tors and
trustees
to join.Wit-
nesseth.

Grant.

Right of
way.Haben-
dum.

(b) As to the power of the tenant for life to convey copyholds, see p. 460 *et seq.* note; and as to the power to sell an easement over the settled estate, see the Act of 1882, s. 3 (i). It is conceived that an easement over freehold land may be granted so as to be annexed in enjoyment to copyholds, the legal effect being the same as if it had been acquired by prescription. The recitals should show in whom the legal estate is vested. If the trustees of a will have not been admitted, and the tenant for life sells under the Settled Land Acts, only one fine is payable; *Re Naylor*, 34 Ch. D. 217.

As to con-
veyance of
copyholds.

PREC. XX. the sd manor, & by and under the rents, fines, suits, & services due & accustomed for the same, & as to the sd rt of way to the intent that the same may be annexed in enjoymt to the sd copyhd premes : [*Acknmt & undertakg as to munimts*, p. 418].
IN WITS, &c.

[*Schdle of Munimts.*]

XXI.

PREC. XXI. CONVEYANCE *under the SETTLED LAND ACTS of FREE-*
HOLDS belonging absolutely to an INFANT (a).

Recitals.
Title of
infant.

Order ap-
pointing
persons to
sell.

PARTIES, A. & B., *the psons apptd by the Ct to sell & convey or the trees of the settlemt*, 1; C., *pchaser*, 2. *WHAS* K. an infant under the age of twenty-one yrs is seised of the hds hby assured wch form pt of the — este hinafter mentd for an este in fee simple in posson free from incumnces under or by virtue of an indre, &c., or, “the will of, &c.,” or, “as hr at law of — who died seised thof intestate on, &c.” AND *WHAS* at the date of the order hinafter recited there were no trees with power of sale over the sd este or orwise for the pposes of the Settled Land Acts, 1882 to 1890, in relon thto; AND *WHAS* by an order of the Chancery Divon made on the — day of — by Mr. Justice — in the mre of, &c., it was ordered that the power of sale & convce & other powers conferred upon tenants for life by the Settled Land Acts, 1882 to 1890, might be exercised by the sd A. & B. on behalf of the sd K. durg his minority over or in relon to the — este, & it was further ordered that on a sale of any pt of the sd este the pchase moy shd be pd into Ct to the credit of, &c. (b); AND

(a) See p. 456 *et seq.*, note; and as to infants, p. 465.

(b) As to the necessity for payment into Court in this case, see *Re Dudley*, 35 Ch. D. 338; p. 465, note. If the trustees have a power of sale under the settlement or will, they may sell under that power or under the statutory power without any order of the Court; and it will probably be a matter of indifference which course is adopted, unless it be with reference to the re-investment of the purchase-money. If the sale is made under the statutory power the following recital should be added: “And by the sd indre [will] a power of sale of the sd hds is vested in the sd A. & B.

WHAS the sd A. & B. have, by virtue of the powers conferred on them by the sd recited order agrd with the sd C. for the absolute sale to him of the hds hby assured & the inhance thof in fee simple in posson for the sum of £——; [*Recital introductory to covt for prodon of deeds*, p. 374;] *recital of diron for paymt into Ct & paymt accdly*, see p. 468: NOW THIS INDRE WITNETH that in psuance, &c. & in conson of the sum of £—— now pd by the sd C. into Ct as afsd, the sd A. & B. by virtue of the powers conferred on them by the Settled Land Acts, 1882 to 1890, & under the sd order of the —— day of —— & by virtue of every other power enablg them in this behalf, do hby, on behalf of the sd K., grt & convey unto the sd C., *Pcels*, p. 377 *et seq.*, To HOLD the same premes UNTO & TO THE use of the sd C., his hrs & assns: AND THE sd A. & B. as well on their own respive behalf as on behalf of the sd K. (c) hby acknowe the rt of the sd C. to the prodon of the munimts mentd in the schdle hto (wch are in the custody of the sd K. or of the sd A. & B. in his rt) & to delivery of copies thof. IN WITS, &c.

PREC. XXI.

Wit-
nesseth.

Grant.
Habendum
to pur-
chaser in
fee.
Acknow-
ledgment
as to
deeds.

[*Schdle of Munimts.*]

as the psnt trees thof durg the minority of the sd K.," or, "the sd A. & B. were appted trees of the sd hds for the pposes of the Settled Land Acts, 1882 to 1890." If the sale is made by the trustees under the Act, they can sell the mansion-house, or land held with it, of their own authority and without an order of the Court.

(c) There may be questions as to who has in law the custody of the deeds belonging to the infant in this case, and as to the legal effect of the acknowledgment: see p. 414, note. The above form may obviate questions as far as the case admits.

XXII.

PREO. XXII.

CONVEYANCE by the EXECUTORS and DEVISEES (a) of a SECOND mortgagee under a power of sale, with the concurrence of the FIRST mortgagees, of FREEHOLDS and COPYHOLDS to the uses of a STRICT SETTLEMENT on a purchase by a TENANT FOR LIFE under the powers of the SETTLED LAND ACTS (b).

PARTIES, A., B., & C., *first mtgees*, 1; D. & E., *exs & devisees of second mtgee*, 2; F., *tenant for life under settlemt*, 3; G. & H.,

(a) The mortgagee is supposed to have died before 1882, otherwise the legal estate in the freeholds would vest in the executors; see p. 126, note. The executors and devisees of mortgage estates (under the old law) would generally be the same persons.

Investment
of capital
money
under
Settled
Land Acts.

(b) See note on the Acts, p. 456 *et seq.* Capital money arising under the Act may be invested (under s. 21) subject to any claims properly payable thereout, and to any special object for which it was raised:—1. In securities authorised by the settlement or the general law for the investment of trust moneys, *plus* such railway debentures or debenture stock as therein mentioned; as to which see now the R. S. C. Order XXII. r. 17, and the Trustee Act, 1893, s. 1. As to deferring the purchase of land when directed by the settlement, and investment in the meantime under the Act, see *Re Maberly*, 33 Ch. D. 455. 2. In discharge of incumbrances, whether affecting the whole or a part of the settled estates (*Re Freme*, [1894] 1 Ch. 1). As to extraordinary tithe, see Extraordinary Tithe Redemption Act, 1886 (49 & 50 Vict. c. 54), ss. 5 and 6. 3. In payment for improvements (*Re Stamford*, 43 Ch. D. 84; *Re Munday*, [1891] 1 Ch. 399; *Re Gaskell*, [1894] 1 Ch. 485; *Re Gerard*, [1893] 3 Ch. 252, disapproving *Re Houghton*, 30 Ch. D. 102; *Re Walker's Settled Estate*, [1894] 1 Ch. 189), including improvements under the Agricultural Holdings (England) Act, 1883 (46 & 47 Vict. c. 61), s. 29, and the redemption of rent-charges created to pay for improvements; see the Settled Land Acts (Amendment) Act, 1887 (50 & 51 Vict. c. 30); *Re Egmont*, 45 Ch. D. 395 (disapproving *Re Sudeley*, 37 Ch. D. 123); *Re Newton*, 61 L. T. 787. 4. In payment for equality of exchange or partition. 5. In the enfranchisement of copyholds or freeholds subject to the settlement. 6. In the purchase of the reversion of leasehold land so subject. 7. In the purchase of freehold, copyhold, or leasehold land (the latter having 60 years unexpired), with or without the minerals (but not out of England unless authorised by the settlement, s. 23). 8. In the purchase in fee, or for 60 years or more, of minerals and easements convenient to be held with the settled land. 9. In payment to any person absolutely entitled; see *Cookes v. Cookes*, 34 Ch. D. 498. 10. In payment of costs; see *Re Beck*, 24 Ch. D. 608; as to extra costs occasioned by incumbrances on the life estate, see *Cardigan v. Curzon-Howe*, 40 Ch. D. 338, 41 Ch. D. 375; and as to costs of an abortive sale, see *Re Smith*, [1891] 3 Ch. 65. 11. In any other mode in which sale moneys are applicable under the settlement. 12. In the payment of estate duty, see Finance Act, 1894, s. 9 (7).

trees of settlment, 4. Recite mtge of freehds & copyhds by X. to A., B., C., & K., p. 353, on jt acct, settg out jt acct clause (if any) (c), omittg the covt for paymt; condonal surrender by X. to A., B., C., & K., p. 352; death of K.; second mtge of freehds

PREC. XXII
Recitals.

The provisions for investment apply to any money paid into Court under any statute (s. 32), or in the hands of trustees (s. 33), which is liable under a settlement to be laid out in the purchase of land; see as to the latter section, *Re Mackenzie*, 23 Ch. D. 750; *Re Tennant*, 40 Ch. D. 594; *Re Mundy*, [1891] 1 Ch. 399.

The investment is to be made, if the money is in the hands of the trustees, by direction of the tenant for life, and if in Court, on his application or that of the trustees, s. 22 (2, 3). The effect of the above provisions in the Act is to make the tenant for life (and not the trustees) the proper person to enter into the contract of purchase; but if the money is in Court, the contract should be subject to being sanctioned by the Court.

Powers of
tenant for
life.

By s. 24 (1, 2, 3), freehold land acquired by purchase, &c., is to be conveyed to the uses, &c., which, under the settlement or by the exercise of any power of charging therein contained, are subsisting with respect to the settled land, or as near thereto as circumstances permit, but not so as to increase charges or powers of charging; and copyhold, customary, or leasehold land is to be conveyed to and vested in "the trustees of the settlement" (as defined by the Act), on trusts, &c., corresponding as nearly as the law and the circumstances permit, with the uses, &c., to which freehold land is to be conveyed as aforesaid, subject to a provision preventing the beneficial interest in land held by lease for years from vesting absolutely in a tenant in tail dying under 21.

Mode of
convey-
ance,

By s. 24 (4, 5, 6), provision is made (supplementary to s. 5), for enabling the purchased land to be made a substituted security for any charge previously affecting any part of the settled land which has been sold, &c.

as to
charges,

By s. 24 (7), these provisions are to apply as far as may be to mines and minerals, and to easements and rights over or in relation to land. As to the grant of easements and rights by way of use, see the Conv. Act, 1881, s. 62, *ante*, p. 285 note, p. 307 note.

mines,
easements,
&c.

The trustees should, of course, be parties to the conveyance; but they are bound to make the investment according to the direction of the tenant for life, and are protected by s. 42 of the Act from responsibility as regards the contract, the title, or the conveyance (provided the latter purports to convey the land in the proper mode), or for paying the purchase-money according to the direction of the tenant for life. It does not, therefore, seem to concern them to do more than satisfy themselves that the conveyance on its face appears to convey the property comprised in the contract in the manner proper to make it subject to the settlement.

Duty of
trustees.

For a form of direction by the tenant for life to the trustees to pay the purchase-money and costs, see *infra*, DIRECTION AND CONSENT.

(c) This clause would, in a mortgage since 1881, be unnecessary, provided the fact that the mortgage was on joint account appears; see the Conv. Act, 1881, s. 61. On the other hand, notwithstanding the insertion of the clause, the joint account may, as between the mortgagees, be rebutted by evidence (*Re Jackson*, 34 Ch. D. 732); but this could not affect a purchaser without notice.

As to joint
account
mortgages.

PREC. XXII. *& copyhds by X to Y., subjt to the prior mtge, settg out the power of sale, if any, & subsidiary provons as in Precedent XVI., with the exception of the provon as to the hr of the mtgee joining in the convee; condonal surrender by X. to Y., p. 352; will of Y. apptg D. & E. exs & devisg mtge estes to them; death of Y. & probate, p. 365, strict settlmt (under wch F. is tenant for life in posson, p. 357); & in the sd indre is contd a power of sale of the hds thrin comprd, to be exercised by the trees or tree for the time being of the sd settlmt at such reqt or at such discreon as thrin mentd, with a diron for the investmt of the moys arisg from any such sale in the pchase of freehd or copyhd hds to be conveyed to the uses or upon the trusts thof as thrin mentd, or, if so, “ & the sd G. & I. were thby apptd trees thof for the pposes of the Settled Land Acts, 1882 to 1890; ” & in the sd indre now in recital is contd a power for the apptmt of new trees thof, in the place of trees dying or orwise as thrin mentd: AND WHAS the sd I. died on, &c. : AND WHAS by an indre, dated, &c., in exercise of the sd power in that behalf in the hinbfe-recited indre of settlmt contd, the sd H. was apptd to be a tree thof in the place of the sd I. : AND WHAS certn portions of the hds comprd in the sd indre of settlmt have lately been sold: AND WHAS the sd D. & E., as exs of the sd Y., & in exercise of the power of sale conferred on them by the sd indre of mtge of, &c., [& the statute in that behalf] have agrd to sell, & the sd F., as tenant for life under the sd indre of settlmt by virtue of the powers of the Settled Land Acts, 1882 to 1890, has agrd to pchase the freehd hds hby grted in fee simple in posson & the copyhd hds hinafter covtd to be surrendered, & the inhance thof in posson, accdg to the custom of the sd manor, for the sum of £——, wch the sd F., by virtue of the sd Acts, has directed to be pd by the sd G. & H. out of moys in their hands arisg from such sale or sales as afsd, & wch are liable to be invested under the provons of the sd Acts, & the sd F. has also directed that the sd pchased hds shl be conveyed & assured in mner hinafter appearg (a), *Recital of amt**

Settle-
ment.

Death of
trustee.

Appoint-
ment of
new
trustee.

Sale of
settled
estates.

Agreement
for sale.

Short
recital of
purchaser's
settlement.

(a) The recitals of the settlement, and the dealings under it may be shortened as at p. 357, Form XXXIV., or may be omitted altogether, in which case the introductory recital will be as follows:—“ AND WHAS the sd D. & E., &c., as in the text, have agrd to sell, & the sd F. as

due to A., B., & C., & agrmt that they shd be pd off & concur, PREC. XXII.
p. 373: AND WHAS no admittce eir of the sd A., B., & C., or No admit-
of the sd Y. or the sd D. & E., to the sd copyhd hds or any tance to
pt thof, has taken place psuant to the sd respive hinbfe recited copyholds.
condonal surrenders: AND WHAS satisfon is intd to be forthwith Satisfac-
entd on the sd condonal surrender to the use of the sd A., B., tion to be
& C.: *Apportionmt of pchase-moy for ad valorem duty as to entered up.*
copyhds, p. 374: NOW THIS INDRE WITNETH that in Wit-
psuance, &c., & in conson of the sum of £——, *apportioned pt nesseth.*
of *pchase-moy for freehds*, pd by the sd G. & H. to the sd A.,
B., & C., by the diron as well of the sd D. & E. (b) as of the sd
F. (the rect of wch sum of £ —— the sd A., B., & C. do hby
acknowe as in full dischge of all ppal moys & intt owing to
them on the secy of the hinbfe recited indre of, &c.) & in
conson of the sum of £——, *balce of apportioned pchase-moy*
for freehds, pd by the sd G. & H. by the like diron to the sd
D. & E. (the paymt & rect in mner afsd of wch sd sums of
£—— & £——, makg togr the sum of £——, being the
apportioned pt of the sd pchase-moy for the sd freehd hds,
the sd D. & E. do hbyacknowe), the sd A., B., & C., as mtgees,
by the diron as well of the sd D. & E., as of the sd F., do
resply hby grant & rele, & the sd D. & E., as mtgees, [in
exercise, &c., see p. 450] do resply hby grt & confirm unto Grant of
the sd G. & H. *freehd pcels*, p. 377, To HOLD the same freeholds.
premes UNTO the sd G. & H. & their hrs, *free from the mtges*, Habendum
p. 395, “& from all rt or equity of redmon, & all claims & to trustees.
demands under the same resply:” *To the uses of the settlemt*,
p. 395, *form xi.*: AND THIS INDRE ALSO WITNETH To uses of
settlement.
Wit-
nesseth.

tenant for life, under an indre dated, &c., being a settlemt of
certn estes situate, &c., *as in text*, the purchase-money being directed
to be paid “by the sd G. & H., out of moys in their hands,
being capital moys under the sd settlemt arisg or liable to be
invested under the provons of the sd Acts.”

It may, however, be necessary sometimes to recite the limitations of the
settlement, and the source from which the purchase-money is derived, in
some detail, to show the uses to which the purchased property should be
conveyed.

(b) The payment to the first mortgagees should be made by the direction
of the second mortgagees (the vendors), so as to protect the purchasers from
being concerned with the state of the account between the first mortgagees
and the mortgagor.

PREC. XXII.	that in psuance, &c., & in conson of the sum of £——, being the apportioned pt of the sd pchase-moy for the sd coyhd hds, pd by the sd G. & H., by the diron of the sd F., to the sd D. & E. (the rect, &c.), the sd D. & E. as mtgees [in exercise, &c., see p. 451] do resply hby covt with the sd G. & H., their hrs & assns, that they, the sd D. & E., or their hrs, will forthwith, at the cost of the sd G. & H., their hrs or assns, procure themselves to be admitted tenants, psuant to the sd surrender of the —— day of ——, of, <i>copyhd pcels</i> , p. 377: And will immedly after such admittce at the like cost surrender the same hds, To the use of the sd G. & H., their hrs & assns, accdg to the custom of the sd manor, by & under the rents, fines, suits, & services due & of rt accustomed for the same, <i>free from the mtges, &c., as above, upon trusts of settlemt, see p. 395, form XI. [Acknowemt as to munimts, if any, retained (a)].</i> IN WITS, &c.
Covenant to be admitted to copyholds,	
and surrender.	
To use of trustees.	
Upon trusts of settlement.	

[Schdle of Munimts].

XXIII.

CONVEYANCE of the EQUITY of REDEMPTION of FREEHOLDS (b).

PREC. XXIII.	
Recitals.	<i>PARTIES, A., vendor, 1; B., pchaser, 2. Recite mtge in fee from A. to C., p. 351, noticg the covt for paymt. State of mtge debt, p. 373: AND WHAS the sd B. has contracted with the sd A. for the absolute pchase of the sd —— & hds hby grted, & the inhance thof in fee simple, subjt to the hinbfe recited indre of mtge, & the sd ppal sum of £——, & the intt now due, & hrafter to accrue due thron, wch are to be borne & pd by the sd B., for the sum of £——, makg, with the sd ppal sum of</i>
Contract.	

(a) As both the freeholds and copyholds are conveyed to G. & H. to the uses or upon the trusts of the settlement, the acknowledgment will be made to them.

(b) See Elph. Introd., p. 124. See also the next Precedent; and as to the rights arising out of a conveyance of an equity of redemption as between mortgagor and mortgagee, see *Kinnaird v. Trollope*, 39 Ch. D. 636; 32 Sol. J. 717; and as between mortgagee and assignee, see *Re Errington*, [1894] 1 Q. B. 11. As to the stamp, see the Stamp Act, 1891, s. 57.

£——, & the sd sum of £—— now due for intt, the sum of £——: NOW THIS INDRE WITNETH that in psuance, &c., & in conson, &c. (the rect, &c.) & in conson also of the covt hinafter contd on the pt of the sd B., the sd A., as benefl owner, doth hby grt unto the sd B., *pcels*, p. 377: *Habendum to B. in fee*, p. 393, subjt to the hinbfe recited indre of mtge, & to the paymt of the sd ppal sum of £—— now owing as afsd upon the secy of the same indre, & the intt now due, & henceforth to accrue due in respt thof. *Covt by B. with A. to indemnify A. agst mtge debt*, p. 421. IN WITS, &c. (c).

PREC.
XXIII.Wit-
nesseth.

Grant.

XXIV.

CONVEYANCE of EQUITY of REDEMPTION of LEASEHOLDS.

PREC.
XXIV.

THE MORTGAGEE concurring for the purpose of RELEASING the Vendor's COVENANT for PAYMENT of the mortgage debt, and taking a SUBSTITUTED COVENANT from the PURCHASER. VARIATION where the mortgagee WAIVES his RIGHT of CONSOLIDATION instead of releasing the covenant (d).

PARTIES, A., vendor, 1; B., mtgee, 2; C., pchaser, 3. Recite Recitals.
lease to A., p. 357; Mtge from A. to B., p. 352; noticg the covt

(c) Notice of the conveyance should be given to the mortgagee; see 2 Dart, V. & P. 784.

(d) On the subject of the Consolidation of Mortgages, and the risks to a purchaser of an equity of redemption arising from this doctrine, see 2 Dav. Prec., part 2, 288 *et seq.*; Elph. Introd., pp. 125, 212; *Jennings v. Jordan*, 6 App. Cas. 698; *Harter v. Colman*, 19 Ch. D. 630; *Bird v. Wenn*, 33 Ch. D. 215; *Minter v. Carr*, [1894] 3 Ch. 498; *Pledge v. Carr*, [1894] 2 Ch. 328, on appeal; [1895] 1 Ch. 51; *Pledge v. White*, [1896] 1 Ch. 187. The right of consolidation is abolished where the mortgages, or one of them, are made after 1881, by the Conv. Act, 1881, s. 17; but only if a contrary intention is not expressed in the mortgage deeds, or one of them, so that it cannot be certain that the mortgagee may not still have the right. If the mortgagee releases the vendor's covenant, no question of consolidation can of course arise. To complete the purchaser's protection as against a transferee of the mortgage (whether the covenant or the right of consolidation is released), notice of this deed should be endorsed on the mortgage. This deed requires an *ad valorem* conveyance stamp on the amount of the purchase and mortgage moneys (see the Stamp Act, 1891, s. 57), as well as an *ad*

Consolida-
tion of
mortgages.

Stamp.

<p>PREC. XXIV. — Agreement for con- currence of mortgagees. Wit- nesseth. Assign- ment.</p>	<p><i>for paymt; State of mtge debt, p. 373; Contract for sale, see last precedent, & p. 870; AND WHAS it hath been agreed that the sd B. shall release the sd A. [and that the sd C. shl covt] in mner hinafter appearg: NOW THIS INDRE WITNETH, that in psuance, &c., & in conson, &c. (the rect, &c.), & in conson also of [the rele hinafter contd by the sd B.], [the covt hinafter contd by the sd C.], the sd A. as benefl owner, doth hby assn unto the sd C., pcels by referce to lease, p. 381, form xvii.: habendum to C., subjt to rent & covts, p. 396, & to the mtge, see p. 394: covt by C. with A. to indemnify him in respt of rents & covts of lease, p. 419 [& agst mtge debt, if not reled by the mtee, p. 421, the latter covt, if inserted, being amalgamated with the former]: [AND THIS INDRE ALSO WITNETH that in conson of the covts on the pt of the sd C., hinafter contd, the sd B. doth hby rele the sd A., from the sd mtge debt of £—, & the intt thron (a): AND IN CONSON of the premes, the sd C. doth hby covt with the sd B., covt for paymt of mtge moy & the intt thron from the — day of — last, & future intt, see "MORTGAGES," mutatis mutandis, & also that he, the sd C., his exs, ads, & assns, will duly pform & observe all the other covts by the sd A., in & by the sd indre of mtge contd & implied (except the covts for title to & further assurse of the sd premes)] [or, AND THIS INDRE ALSO WITNETH that the sd B. doth hby, at the reqt of the sd A. & C., rele to the sd C., his exs, ads, & assns, all the rts of him the sd B., to consolidate any other mtge debt or secy with the sd sum of £—, or the sd secy for the same, so as to chge the sd — & hds hby assned with any sum or sums of moy other than the sd ppal sum of £—, & the intt thron]: PROVD ALWAYS that nothg hrin contd shl prejudice or affect the power of sale contd in the sd recited indre of mtge. IN WITS, &c.</i></p>
<p>Further witnesseth.</p>	
<p>Release of vendor from mort- gage debt. Covenant for pay- ment of mortgage debt.</p>	
<p>Further witnesseth. Release.</p>	
<p>Of right of consolida- tion.</p>	

valorem stamp of 6d. per cent. on the mortgage money in respect of the new covenant for payment (if any) as a substituted security (see the Act, Schedule, title MORTGAGE), or a 10s. stamp in respect of the release of the right of consolidation, if inserted.

(a) If necessary, add, "& the covts by the sd A. in & by the sd indre of mtge contd & implied, except the covts for title to & further assurse of the premes."

XXV.

RELEASE of EQUITY of REDEMPTION of FREEHOLDS to the MORTGAGEE (b). VARIATIONS for LEASEHOLDS mortgaged by demise, and where the mortgage is kept on foot for the Purchaser's PROTECTION (c). PREC. XXV.

PARTIES, A., vendor, 1; B., mtgee & pchaser, 2. Recite mtge in fee from A. to B., p. 351; State of mtge debt, p. 373: AND WHAS the sd A. has agrd with the sd B. for the sale to him of the hds hby assured, in conson of the release by the sd B., hinafter contd & of the paymt by the sd B. to the sd A. of the sum of £——, makg with the sd sum of £—— so owing on the secy of the indre of mtge as afsd, the sum of £——, [but so nevs that the sd sum of £—— so owing on the secy afsd, shl be kept on foot as a chge on the sd hds for the benefit of the sd B., his hrs & assns, in mner hinafter appearg]: NOW THIS INDRE WITNETH that in psuance, &c., & in conson of the sum of —— now pd by the sd B. to the sd A., (the rect, &c.), & in conson also of the rele hinafter contd by the sd B., the sd A. as benefl owner doth hby grt & rele unto the sd B., pcls, p. 377 (d); Habendum to B. in fee, free from equity of redmon, p. 397: AND IN CONSON of the premes the sd B. doth

Recitals.
Agree-
ment.

Wit-
nesseth.

Grant.

Release of
mortgage
debt (e).

(b) A mortgagee may purchase the equity of redemption from the mortgagor, if there is no undue pressure or unfairness in the transaction; see 2 Dav. Prec., part 1, p. 294, note. The power formerly possessed by a mortgagee of harassing the mortgagor, and making it difficult for him to find a person to take a transfer of the mortgage, by refusing to produce the title-deeds, has been removed by the Conv. Act, 1881, s. 16.

(c) See note to Prec. XIII. It is considered to be beyond question that the mortgage debt may be kept alive by a simple declaration without an assignment to a trustee. See *Adams v. Angell*, 5 Ch. D. 634; *Re Pride*, [1891] 2 Ch. 135; *Minter v. Carr*, [1894] 3 Ch. 498; *Thorne v. Cann*, [1895] A. C. 11.

Purchase
of equity
of redemp-
tion by
mortgagee.

As to
keeping
mortgage
debt alive.

(d) The parcels may (and more commonly would) be set out in the recital of the mortgage, in which case the grant will be of, "All & singr the hds comprd in the sd indre of mtge, or wch are now by any means vested in the sd B., subjt to redmon by virtue thof."

(e) A duplicate of the conveyance executed by the mortgagee should be delivered to the mortgagor, or the release of the debt might be by a separate instrument.

The variations for leaseholds will be as follows: the deed will commence with the recital of the lease, and in the recital of the contract for sale the

Variations
for lease-
holds.

PREC. XXV.

Proviso
keeping
alive
mortgage.

hby rele the sd A., his hrs, exs, & ads, from the sd sum of £—— owing on the secy of the sd indre of mtge as afsd, & all intt to accrue due thron, & from all actions, pcdgs, claims, demands, & liability in respt thof or orwise under the sd indre of mtge: [PROVD ALWAYS, & the sd B. doth hby declare that the sd sum of £——, & the intt to accrue due in respt thof, shl not merge in the equity of redmon of the sd hds & premes, but shl be kept on foot as a chge on the premes, so as to protect B. his hrs & assns agst all mesne incumbces, chges & estes, if any such there be.] [*If the munimts of title wch are in the posson of B. relate to any ppty retained by A. add acknowemt & undertakg by B., p. 418.*] IN WITS, &c.

XXVI.

PREC.
XXVI.

CONVEYANCE of a BANKRUPT'S FREEHOLDS, LEASEHOLDS, and COPYHOLDS by the Trustee in Bankruptcy (a), with the concurrence of the REPRESENTATIVES of a MORTGAGEE. VARIATIONS where the BANKRUPT joins to CONFIRM the Sale and COVENANT for Title (b).

property will be described as "the premes comprd in the hinble recited indre of lease;" in the operative part A. will "assn & rele" the parcels by reference to the lease, habendum "unto the sd B., his exs, ads, & assns, henceforth for all the residue now unexpired of the sd time of —— yrs grted by the sd lease," subject to rent and covenants, &c., but free from equity of redemption, "& to the intent that the sub-term grted by the sd indre of mtge shl merge in the sd term of —— yrs grted by the sd indre of lease & become extinguished;" add the usual covenant of indemnity against the rent and covenants of the lease.

As to sale
under
Bank-
ruptcy
Acts.

(a) See the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52). As to the trustee and his powers, see ss. 21, 43, 44, 54, 56, 68 (3), 70 (10), 87 (4). As to evidence of his appointment, see s. 138. The official receiver when acting as trustee, in the interval between the adjudication and the appointment of a trustee by the creditors, has power to sell the bankrupt's property: *Turquand v. Board of Trade*, 15 Q. B. D. 196; 11 App. Cas. 286. As to partnership property, see s. 112. As to stamp duty, see s. 144. As to the powers of a trustee under a composition or scheme of arrangement, see the Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 3 (16).

Concur-
rence of
bankrupt.

(b) There can seldom be any occasion for obtaining the bankrupt's concurrence, as the annulment of the bankruptcy would not prejudice bond

*PARTIES, A. & B., exs & devisees (c) of mtgee, 1; C., the tree of the ppty of D., a bkpt (hinafter called the sd tree), 2 (d); [the sd D., bkpt, 3;] E., pchaser, 4. Recite lease, p. 357; Devolon of title to bkpt D., p. 359; Mtge of freehds, leasehds & copyhds by D. to X., p. 353; Condonal surrender to X., p. 352; Will of X. apptg A. & B. exs, & devisg mtge estes to them; Death of X. & probate, p. 365; Bkptcy of D., & apptmt of C. tree, p. 368; Contract by C. for sale to E., p. 370; State of mtge debt, p. 373; Agrmt of A. & B. to concur, p. 373: [AND WHAS the sd D., at the reqt of the sd tree, has agrd to concur in these psnts in mner hinafter exprd]: NOW THIS INDRE WITNETH that in psuance of the sd recited agrmts, & in conson, &c. (the rect, &c.,) the whole pchase-moy (e) pd, as to pt to A. & B., as to balce to the tree, see p. 376, the sd A. & B., as mtgees, at the reqt [or, if pd off in full, by the diron] of the sd tree, do hby grt & rele, & the sd tree, as tree, doth hby grt & confirm, [& the sd D., as benefl owner at the reqt of the sd tree, doth hby grt, rele & confirm] unto the sd E., freehd pcels, p. 377: *Habendum to E. in fee, free from the mtge*, p. 395: AND THIS INDRE ALSO WITNETH that in psuance, &c., & for the conson afsd the sd A. & B., as mtgees, at the reqt [by the diron] of the sd tree, do hby assn [surrender] & rele, & the sd tree, as tree, doth hby assn & confirm [& the sd D., as benefl owner, at the reqt of the sd tree, doth hby assn, rele, & confirm] unto the sd E., leasehd pcels, p. 381. *Habendum to E., subjt to rent, &c. & free from mtge*, see pp. 395, 396. AND THIS INDRE ALSO WITNETH that in further psuance, &c., & for the conson afsd, the sd tree, as tree, doth hby appt, & the sd A. & B. as mtgees, at the reqt [by the diron] of the sd tree do hby rele (f) [& the sd D. as benefl owner, doth hby grt, rele, & confirm] copyhd*

PRBC.
XXVI.

Recitals.

Agreement
of bank-
rupt to
concur.Wit-
nesseth.

Grant.

Further
witnesseth.Assign-
ment of
leaseholds.Further
witnesseth.

fide sales or dispositions of the property (see the Bankruptcy Act, 1883, s. 35); and the bankrupt's covenants would rarely be of any value. As to a sale by an undischarged bankrupt of real estate acquired after the bankruptcy to a bona fide purchaser for value, see *Re New Land Development Association*, [1892] 2 Ch. 138.

(c) See p. 476, note.

(d) See the Bankruptcy Act, 1883, s. 83.

(e) As the copyholds in this case are conveyed by deed, without any surrender (see the Bankruptcy Act, 1883, s. 50 (4)), no apportionment of the purchase-money is required: see the Stamp Act, 1891, ss. 58, 61.

(f) The conditional surrender to the mortgagee will be vacated.

Stamp.

PREC.
XXVI.
—
Grant of
copyholds.

pcels, p. 377, To THE USE of the sd B., his hrs & assns, accdg to the custom of the sd manor, subj to the rents, fines, suits & services due & accustomed for the same: [*Cort by E. with D., & also as a septe cort with the tree, if he is under any continuing liability (a), to indemnify them resply agst the rent & covts of lease, see p. 419.*] IN WITS, &c.

XXVII.

PREC.
XXVII.
—

CONVEYANCE by HUSBAND and WIFE of the WIFE's FREEHOLDS under the OLD law (b) to a SUB-PURCHASER, to whom the benefit of the contract has been transferred pending completion at an ADVANCE in PRICE (c).

Recitals. PARTIES, A. & B., "his wife," vendors, 1; C., origl pchaser, 2; D., sub-pchaser, 3: WHAS the sd A. & B., who intermarried

Married
women's
powers of
disposition.

(a) See above, p. 243, note (h); p. 419, note (f).

(b) If the marriage took place or the property was acquired by the wife after 1882, she would have an absolute power of disposition as a *feme sole* under the Married Women's Property Act, 1882, ss. 1, 2, and 5 (*Re Drummond & Davis*, [1891] 1 Ch. 524), see Prec. XXIX., *infra*, which is adapted to that case, and the note thereto. If both the marriage and the acquisition of the property were before 1883, the wife's power of disposition is governed by the old law; but she is nevertheless able to contract as a *feme sole* under s. 1 of the above Act as modified by the Amendment Act, 1893, s. 1 (as she also was to a more limited extent under the old law), with respect to her separate estate (but see *post*, p. 491, note); and her implied covenants for title and acknowledgment and undertaking as to muniments operate accordingly.

Acknow-
ledgments
under old
law.

In the case of the above precedent, as the wife's rights are governed by the old law, and the property is not settled to her separate use, the husband must concur and she must acknowledge the deed under the Fines and Recoveries Act, 3 & 4 Wm. 4, c. 74, ss. 77 *et seq.* By the Conv. Act, 1882, s. 7, the acknowledgment of deeds as to real estate under that Act (and see as to contingent interests, &c., 8 & 9 Vict. c. 106, ss. 6 and 7, and as to reversionary interests in personal estate under 20 & 21 Vict. c. 57), in those cases in which it is still necessary, is simplified by substituting one commissioner for two, and doing away with the filing of a certificate of the acknowledgment; so that upon the memorandum of acknowledgment by one commissioner being endorsed on or written at the foot or in the margin of the deed, the acknowledgment is complete: see the Rules of December, 1882, under

Sub-sales.

(c) As to sub-sales, see 1 Dart, V & P. 581; and as to the stamp, see the Stamp Act, 1891, s. 58 (4).

togr on the — day of —, are seised in rt of the sd B., &c.,
 p. 362, under an indre, &c.; *Contract for sale by A. & B. to C.,*
& sub-contract for sale by C. to D. p. 372. NOW THIS INDRE
 WITNETH, that in psuance of the sd respive agrmts, & in
 conson of the sum of £—— to the sd A. & B., & of the sum of
 £—— to the sd C., resply pd by the sd D. (the rect of wch
 respive sums the sd A., B., & C. do resply hby acknowe), the sd
 B., as benefl owner (*d*), with the concurrence of the sd A., at the
 reqt of the sd C., doth hby grt, & the sd A., as benefl owner (*d*),
 & the sd C., as benefl owner (*d*), do resply hby grt & confirm

PREC.
XXVII.

Wit-
nesseth.

Grant.

the Act. As to the date of the acknowledgment, see *Ex parte Taverner*, 20 Beav. 490; 7 D. M. & G. 627; *Druitt v. Willens*, 23 L. R. (Ir.) 436: as to its effect, see *Tennent v. Welch*, 37 Ch. D. 622; and as to the effect of an order dispensing with the husband's concurrence under the Fines and Recoveries Act, s. 91, see *Fowke v. Draycott*, 29 Ch. D. 996. A married woman can by deed acknowledged dispose of her reversionary interest in a mortgage vested in the trustees of her marriage settlement, *Miller v. Collins*, W. N. 1896, 23. Application to dispense with the concurrence of a husband in a disposition by a married woman, either under the Fines and Recoveries Act or Malin's Act, are heard by a Judge of the Queen's Bench Division in Chambers, and are in the first instance made *ex parte*: R. S. C., Order LIV., r. 12 (B); 40 Sol. J. 194. The husband's concurrence is effectual notwithstanding his previous bankruptcy: *Re Jakeman*, 23 Ch. D. 344. The following is the form of acknowledgment in the Rules of December, 1882:—

“This deed was this day produced bfe me & acknowed by,
name in full of married woman or women, thrin named to be
 her act & deed [their sevl acts & deeds] prevs to wch
 acknowemt[s] the sd was [were] examined by me
 septely & apart from her husbd [their respive husbds] touchg
 her [their] knowledge of the contents of the sd deed &
 her [their] consent thto, & [each of them] decl'd the same to be
 freely & voluntarily exted by her [& I declare that I am not
 intted or concerned eir as a pty or as a solor or clerk to the
 solor for one of the pties or orwise in the transon givg
 occasion for the sd acknowemt].

Form of
memo-
randum of
acknow-
ledgment.

Wits my hand this day of ,

(Signed)

A. B.,

a Judge, &c., or, a perpetual Commr,
 &c., as the case may be.”

A purchaser dealing with a married woman is not bound to inquire into
 the existence of a settlement: *Lloyd's Banking Co. v. Jones*, 29 Ch. D. 221;
 but it is a prudent precaution to do so: *Ward v. Duncombe*, [1893] A. C. 369.

Enquiry
as to
settlement.

(*d*) This implies covenants for title by B., binding her separate estate, as

Covenants
for title.

PREC.
XXVII.
—

unto the sd D., *pcels*, p. 377 : *habendum to D. in fee*, p. 393. [Acknmt & undertakg by A. as to munimts belonging to B. (a), p. 418]. IN WITS, &c. (b).

XXVIII.

PREC.
XXVIII.
—

CONVEYANCE of FREEHOLDS *belonging to a MARRIED WOMAN absolutely for her SEPARATE USE under the Old law, to the USES of a WILL in STRICT SETTLEMENT, on a purchase by the TRUSTEES (c). VARIATIONS where the HUSBAND is made a PARTY (d).*

Recitals. *PARTIES, A., married woman, 1 ; [B., husbd, 2 ;] C., tree, 3 ; D. & E., trees of will & grtees to uses, pchasers, 4. Recite deed*

to the acts of herself and her predecessors in title, by A. as to the acts of himself and B., and her predecessors in title, and by C. as to his own acts only, he being a purchaser for value ; see p. 399, note. C. would sometimes be made to covenant only against incumbrances (which would be effected by making him convey “ as tree ” ;) but it is better to make him give the full covenants, and there can be no reason against his doing so.

Acknow-
ledgment.

(a) It is conceived that the deeds must be considered in law as in the sole possession of the husband in right of the wife, and that the husband is therefore the proper person to give the statutory acknowledgment, see p. 413.

(b) To be acknowledged by B.

(c) For a form for a purchase by a tenant for life under the Settled Land Act, see p. 476. This precedent is for a case in which there is no person possessing the powers of the Act ; otherwise his concurrence would be necessary under s. 56 ; see note on the Act, pp. 456 *et seq.*

Disposition
by married
woman of
her sepa-
rate estate.

(d) A married woman entitled to property, real or personal, for her separate use, without any restraint upon anticipation, can, independently of the Married Women's Property Act, 1882 (as to which see *infra*, p. 490, note), dispose of the beneficial interest by deed or will, as if she were a *feme sole*, Elph. Introd. 298. She cannot, however (apart from that Act) pass the legal estate, except where, in the case of freeholds (as in the text), she has a power of appointment operating under the Statute of Uses (see p. 397, note). If this is not the case, and the legal estate is vested in trustees, they must join to convey it ; if there are no trustees, and the husband is at law seised in right of his wife, he must concur in the conveyance, which must in that case be acknowledged by the wife, so as to pass the legal estate. Even if the property is settled on the wife so as to enable her to convey the whole legal and equitable estate, it is desirable to obtain the concurrence of the husband, by way of confirmation, lest the wife should have dealt with the property in his favour, and also that he may covenant for the title.

or will whby, "the hds hby assured," were conveyed or devised to such uses as A. shd appt, & in default of apptmt to the use of C. in fee, in trust for the septe use of A.: Contract for pchase by the trees of the will of X., from A., p. 370, form v. Agrmt that [B. &] C. shd "[resply] join in these psnts in mner hinafter appearg." NOW THIS INDRE WITNETH, that in psuance, &c., & in conson of the sum of £—— now pd by the sd D. & E., out of moys arisg as afsd, to the sd A. as her septe este (the rect, &c.), the sd A., as benefl owner (e), in exercise of the power vested in her under the sd indre of, &c. [will], as hinbfe is recited, & of every other power enablg her in this behalf, doth hby appt (f), that ALL & SINGR the hds hby grtd shl (subjt as hinafter mentd), henceforth go & remain To THE USES, upon the trusts, & subjt to the powers & provons hinafter expd concerng the same: AND THIS INDRE ALSO WITNETH, that in further psuance of the sd agrmts, & for the conson afsd, the sd C., as tree (e), by the diren of the sd A., doth hby grt, & the sd A., as benefl owner (e) doth hby grt & confirm [& the sd B., as benefl owner (e), at the reqt of the sd A. doth hby also grt & confirm] unto the sd D. & E., pcels, p. 377; *Habendum* to D. & E., & their hrs, subjt, &c., to *tenancies*, *To the uses of will*, p. 395. [*Acknowemt & undertakg as to munimts retained*, p. 418 (g).] IN WITS, &c.

PREC.
XXVIII.Wit-
nesseth.Appoint-
ment.

Grant.

(e) This implies the same covenant by A. binding her separate estate, and also by B., if he is a party and conveys as beneficial owner, with D. and E., as in the last Precedent, and also a covenant by C. against incumbrances; see p. 400, note. Covenants for title.

(f) If the conveyance is to a purchaser in fee, the appointment and grant may be united in one clause, as in Prec. iv., p. 432.

(g) The acknowledgment must be given by the person or persons in actual possession of the deeds (see p. 414, note); if they are in the custody of the wife, the husband should join in it, as it may be a question whether, although the property is the wife's separate estate, the possession of the deeds would not be deemed in law to be that of the husband, or of the husband and wife jointly, in her right; see p. 415, note (b). Acknowledgment.

XXIX.

PREC.
XXIX.
—CONVEYANCE of FREEHOLDS by a MARRIED WOMAN as a *feme sole* under the MARRIED WOMEN'S PROPERTY ACT, 1882. VARIATIONS where the HUSBAND joins to CONFIRM and COVENANT for the TITLE (a).

Recitals. *PARTIES*, A., *vendor*, the wife of B. of, &c. 1 ; [The sd B. 2 ;] C., *pchaser*, 3. *Recite* A.'s *seisin in fee*, form II., p. 362 ; *Con-*

The Married Women's Property Act, 1882.

(a) The Married Women's Property Act, 1882, 45 & 46 Vict. c. 75, has repealed (s. 22) the Married Women's Property Acts, 1870 and 1874 (which had only a very limited operation), and effected a most important change, as from the 1st of January, 1883, the date of the commencement of the Act, in the legal status of married women.

Power to acquire and dispose of property.

By s. 1 (1) every married woman, whether married before or after the Act, was made capable of acquiring, holding, and disposing by will or otherwise of any property, real or personal (including by s. 24 choses in action), as her separate property in the same manner as if she were a *feme sole*, without the intervention of a trustee.

Women marrying after the Act.

The question whether in any particular case her property is to be deemed her separate property is dependent on ss. 2 and 5 of the Act (subject, however, to the effect of s. 19, as to which see next page). By s. 2 every woman marrying *after* the commencement of the Act is enabled to hold as her separate property, and to dispose of in manner aforesaid, all real and personal property belonging to her at the time of marriage, or acquired by or devolving on her after marriage, including her separate earnings ; and by s. 5 every woman married *before* the commencement of the Act is enabled to hold and dispose of in manner aforesaid as her separate property all real and personal property, her *title* to which, whether vested or contingent, and whether in possession, reversion, or remainder, accrues *after* the commencement of the Act. This last provision, after numerous conflicting decisions, was held by the Court of Appeal, in *Reid v. Reid*, 31 Ch. D. 402, not to apply where the *title* had arisen before the Act, but the property did not fall into possession till afterwards, so that a woman married before 1st January, 1883, who was then entitled to a reversionary or contingent interest, does not, on its falling into possession or becoming absolute, acquire it as her separate property under the Act. But a mere *spes successionis* as one of a class of possible next of kin, is not a "contingent title" within s. 5 ; *Re Parsons*, 45 Ch. D. 51, dissenting from *Re Beaupré*, 21 L. R. Ir. 397.

Women marrying before the Act.

Settlements not to be affected.

It is provided, however, by s. 19, that the Act is not to affect any settlement or any restriction on anticipation ; as to the effect of this, see *Hancock v. Hancock*, 38 Ch. D. 78 ; *Stevens v. Trevor-Garrick*, [1893] 2 Ch. 307 ; *infra*, SETTLEMENTS.

Old law in force as to property acquired by married woman

The old law as to a married woman's power of disposing of her property is thus entirely superseded as to all property which is by the Act made her separate property, as to which she is enabled to dispose of both the legal and equitable estate as a *feme sole* (subject to any settlement or restraint on anticipation), but the Act does not remove the disabilities of a woman

tract for sale, p. 370, *form 1.*; [*Recital introductory to covt for prodon of deeds*, p. 374, *form XXVI.*]; [AND WHAS the sd B. has

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—

married *before* its commencement as regards her power of disposing of property not settled to her separate use, to which she was entitled *at the time* of its commencement (although not falling into possession till afterwards), or affect the marital rights of the husband in respect of such property, and the old law remains to that extent in force.

before the
Act.

As regards property settled to the separate use of a married woman under the old law, she has the same power of disposition as if she were a *feme sole*, so far as the equitable estate is concerned, *Taylor v. Meads*, 4 De G. J. & S. 597; but this does not extend to any legal estate or interest which is vested in her unless (as regards freeholds) she has a power of appointment operating under the Statute of Uses (see p. 488, note (d)); and this disability is not removed by the Act, so that a deed acknowledged may still be necessary in that case (*i.e.*, as to property settled on a married woman prior to 1883), where it would have been before the Act. As to what was sufficient to create separate use in land under the old law, see *Dye v. Dye*, 13 Q. B. D. 147; as to personalty, see *Surman v. Wharton*, [1891] 1 Q. B. 491.

Power of
disposition
over
property
settled to
separate
use.

The late Act *prima facie* relates only to property to which a married woman is beneficially entitled, and not to property of which she is only a trustee (except s. 18, which is confined to stocks, shares, &c.), so that a deed acknowledged with the concurrence of the husband, may still be necessary, *Re Harkness & Allsopp*, W. N., [1896] 64, to pass an interest in land vested in a married woman (whether married before or after the Act), as a trustee (not being a bare trustee within the Vendor and Purchaser Act, 1874, s. 6, repealed by the Trustee Act, 1893, and re-enacted by s. 16, as to which see *Re Docwra*, 29 Ch. D. 693, above p. 229, note), in all cases in which it would have been necessary before the Act.

As to
property
vested in
a married
woman as
trustee

The disabilities of married women (whether married before or after the Act) as regards *contracting* are also removed by the Married Women's Property Act, 1882, which enacts (s. 1, sub-s. 2) that a married woman shall be capable of entering into and rendering herself liable in respect of and to the extent of her separate property on any contract, and of suing and being sued in contract or in tort or otherwise (as to which see *Whittaker v. Kershaw*, 45 Ch. D. 320) as if she were a *feme sole*, and which provided, s. 1 (3) (4), that every contract entered into by her, if she had separate property at the date of the contract, was to be deemed to be entered into with respect to and to bind her separate property, unless the contrary be shown; and was to bind not only the separate property which she was entitled to at that date, but also all separate property which she might thereafter acquire. The Married Women's Property Act, 1893, provides that every contract entered into by a married woman after the 5th December, 1893, otherwise than as agent, shall bind her present and future separate property whether she had or had not separate property at the date of the contract, thus avoiding the inconvenient construction put on the Act of 1882, in *Re Shakespear*, 30 Ch. D. 169, and *Palliser v. Gurney*, 19 Q. B. D. 519, approved by the C. A. in *Stogdon v. Lee*, [1891] 1 Q. B. 661, namely that the contract of a married woman is of no avail under the Act against her future acquired separate estate, unless she is shown (the onus of proof being on the creditor) to have at the date of the contract some separate property free from any restraint on

Power of
married
woman to
contract.

PREC. XXIX. —	at the reqt of the sd A. & for the satisfon of the sd C. agrd to join in these psnts for the ppose of confirmg the title of the sd
Agreement of husband to join.	anticipation; and the further decision in <i>Leak v. Driffield</i> , 24 Q. B. D. 98, that the property must be such that she may reasonably be supposed to have contracted with respect to it.
As to powers of appointment.	By s. 4 the execution of a general power of appointment by will by a married woman is to have the effect of making the property appointed liable for her debts in the same manner as her separate estate is liable under the Act; see as to the old law, <i>In re Harvey</i> , 13 Ch. D. 216; <i>Hodges v. Hodges</i> , 20 Ch. D. 749; <i>Re Roper</i> , 39 Ch. D. 482 (the dictum in which as to the effect of the Act of 1882, overlooks s. 4); <i>Re Lawson</i> , 41 Ch. D. 568; <i>Re Parkin</i> , [1892] 3 Ch. 510, see p. 521.
Contracts of married women how enforced.	The contract of a married woman under the Act is enforceable by or against her, as if she were a <i>feme sole</i> , without joining her husband (see s. 1 (2)), but she cannot be made bankrupt unless she is carrying on a separate trade; <i>Re Gardiner</i> , 20 Q. B. D. 249; <i>Re Armstrong</i> , 21 Q. B. D. 264.
Meaning of separate property.	The rule that judgment recovered against one of two joint contractors is a bar to an action against the other applies equally when one of them is a married woman; <i>Hoare v. Niblett</i> , [1891] 1 Q. B. 781. It is clear from the whole scope of the Act (see specially ss. 13, 20, 21, and compare the provisions of the repealed Acts) that the expression "separate property," as used in the clauses relating to the contracts of a married woman, must be interpreted to include not merely property which is by the Act made her separate property, but also any property settled to her separate use under the old law; so that the effect of the contracts of a married woman entered into after the Act on property so settled is regulated by the Act (<i>Surman v. Wharton</i> , [1891] 1 Q. B. 491); and the old law on this subject is superseded; but questions may arise as to the effect of the Act where a married woman has entered into contracts before as well as since the Act binding such property.
As to making husband party.	Although the contract of a married woman will bind her separate estate under the late Act without being so expressed (see s. 1 of the M. W. P. Act, 1893), it may be desirable, where it is also intended to affect any property settled to her separate use under the old law, that the intention should be expressed. This precedent is for a case where the marriage or the acquisition of the property was after the commencement of the late Act, so that the wife's power of disposition is absolute, and the husband's concurrence is unnecessary; the only reason for making him a party being to obtain his confirmation in case of the possibility of his having a lien by reason of the property having been acquired with his money, or of some subsequent disposition by the wife in his favour, and that he may covenant for the title; but any adverse equity of the husband's would not prevail against a <i>bond fide</i> purchaser from the wife without notice, who gets the legal estate and the deeds.
Effect of covenants for title, &c.	The wife's covenants for title implied by the Conv. Act, 1881, see s. 7 (3), and her acknowledgment as to muniments, will now, under the late Act, operate as if she were a <i>feme sole</i> to the extent of her separate estate; and the husband's implied covenants for title will extend to the acts of his wife as well as himself, see p. 400, note.

C. & orwise in mner hinafter expd]: NOW THIS INDRE WITNETH that in psuance, &c., & in conson of the sum of £—— now pd by the sd C. to the sd A. (the rect whof she doth hby acknowe) the sd A. as benefl owner (a) doth hby grt & convey [& the sd B. as benefl owner (a) as well for the ppose of confirmg the title to the sd premes as for implying covts on his pt for the title to & further assurse of the same doth hby convey & confirm] unto the sd C., *pcels*, p. 377 ; To HOLD the same UNTO & TO THE USE of the sd C., his hrs & assns ; [Acknowemt & undertakg by A. as to munimts retained, p. 418].
IN WITS, &c.

PREC.
XXIX.

Wit-
nesseth.
Grant.

Habendum
to pur-
chaser in
fee.

XXX.

CONVEYANCE by TRUSTEES and EXECUTORS of a WILL to effectuate a CONTRACT for SALE entered into by their TESTATOR (who died since 1881) in his lifetime for the sale of FREEHOLDS to the TRUSTEES of a PERSONALTY SETTLEMENT purchasing under a power to invest in land. The TENANTS for LIFE under the settlement being CONSENTING parties (b).

PREC. XXX

PARTIES, A., B., & C., *exs & trees of will*, 1 ; D. & E., his wife, *beneficiaries under settlemt*, 2 ; F. & G., *trees of settlemt*, 3 ;

(a) This implies the statutory covenants for title and further assurance by A. binding her separate estate, and also by B. ; see p. 400, note, p. 487, note.

(b) Where a vendor dies before completion of the sale, if there was a contract clearly binding on both vendor and purchaser and enforceable at his death, he will have become a trustee for the purchaser, so that the legal estate will follow the ordinary rules for the devolution of trust estates ; *Lysaght v. Edwards*, 2 Ch. D. 499 ; i.e., if he died before 1882, it will have passed to his heir or devisees of trust estates (not being a "bare" trust estate vesting in the personal representative under the Vendor and Purchaser Act, 1874, s. 5, or the Land Transfer Act, 1875, s. 48 ; see as to this, *Morgan v. Swansea Urban Sanitary Authority*, 9 Ch. D. 582 ; *Re Docwra*, 29 Ch. D. 693) ; and if he died since 1881 (as in the case of this precedent), it will have devolved on his personal representatives, under the Conv. Act, 1881, s. 30. If the contract was not enforceable by both parties at the death of the vendor, it seems that the legal estate would not be a trust estate of the vendor, and the question of fact may be one which could scarcely be settled except by a decree of the Court (see *Re Carpenter*, Kay, 418 ; *Re Colling*, 32 Ch. D. 333),

Conveyance
where
vendor
dies
pending
completion.

PRINC. XXX.

Recitals.

Settle-
ment (a).

Whas the sd F. & G., as the psnt trees of an indre dated, &c., & made, &c., being a settlemt, &c., & in exon of a power

but if (as in this case) he died since 1881, his personal representatives, although the legal estate does not vest in them under s. 30 of the latter Act, are, by the 4th section of that Act, empowered, where the contract was enforceable against the vendor at his death, to convey the estate to the purchaser. To bring the case within either the 4th section of the Vendor and Purchaser Act, 1874, or the 30th section of the Conv. Act, 1881, there must have been a contract in writing (which would become part of the title); and even then the difficulty of showing that the case comes within the Act is such as to render it inexpedient to rely on it. The concurrence of the heir or devisees should, therefore, whenever practicable, be obtained. As to the difference between the adoption of the testator's contract and the making of a new contract on the same terms, as regards the conversion relating back to his lifetime, see *Re Harrison*, 34 Ch. D. 214.

Power of
tenant for
life under
Settled
Land Acts
to carry
out con-
tract for
sale by
previous
owner.

Reference may here be made to the Settled Land Act, 1882, s. 31, sub-a. 2, enabling a tenant for life (including any other limited owner under that Act) to carry into effect a valid contract for sale entered into by a previous tenant for life under the same settlement; and to the Settled Land Act, 1890, s. 6, empowering a tenant for life to execute a conveyance for giving effect to a valid contract for sale entered into by any predecessor in title. Where a father tenant for life and son tenant in tail have barred the entail and resettled, relimiting the father's old life estate with remainder to the son for life, and the father then contracts to sell, and dies before completion, the son could doubtless under one or other of these enactments, convey to the purchaser; and although the old settlement had ceased and the son's estate arises under the re-settlement, it is conceived that his conveyance would relate back to the contract so as to override any family charges under the old settlement, and so that the trustees of that settlement would be the proper recipients of the purchase money.

In all the above cases the contract for sale becomes part of the title and should be preserved with the deeds.

As to
keeping
trusts off
title.

(a) No attempt is here made to keep the trusts off the title, as it is doubtful whether in the result it will be of any avail, and no great practical inconvenience arises from their appearing; and it does not seem to concern the vendor to inquire into the trust; see *Mansfield v. Childerhouse*, 4 Ch. D. 82. But if there are a sufficient number of trustees to guard against fraud, there is no material objection to the conveyance being taken to them as joint tenants, as if they were beneficial owners; and, in case of the retirement of any of the trustees and the appointment of new ones, or in the event of the beneficiaries becoming absolutely entitled in possession, the property may be conveyed without disclosing the trust by a deed containing a recital (similar to that in use on the transfer of a mortgage for securing trust money) that the grantees have become absolutely entitled in equity to the property (see as to recitals having for their object the keeping of trusts off the title, *Re Harman*, 24 Ch. D. 720; *Carritt v. Real, &c., Co.*, 42 Ch. D. 263). But in the event of the death of a trustee (having regard to the Finance Act, 1894, s. 2, and in case of the death of a sole trustee, having regard also to the Conv. Act, 1881, s. 30, carrying trust estates to the personal representative), the trust might have to be disclosed; and there would also be a

thrin contd for the investmt of moys subj to the trusts of the sd indre in the pchase of real este, & at the reqt of the sd D. & E. on the — day of — entd into a contract with X., deced, for the pchase from him of the hds hby grted, & the inhance thof in fee simple, for the sum of £—: AND WHAS the title of the sd X. was accepted by the sd F. & G. in his lifetime, but the sd pchase-moy was not pd by them, nor was any convce of the sd premes made to them by the sd X. in psuance of the sd contract; *Will of X. apptg A., B., & C., exs, & containg a general devise of real este to them in trust, death & probate*, p. 365: AND WHAS the sd F. & G. have reqted the sd A., B., & C., to exte a convce of the sd premes to them, the sd F. & G. in psuance of the sd recited contract of the sd testor: AND WHAS the sd F. & G. have raised the sd sum of £—, with the approbon (hby testified) of the sd D. & E. out of pt of the trust funds under the sd settlemt [wch were brought into settlemt on the pt of the sd D. (b)]. NOW THIS INDRE WITNETH that for effectuatg such sale as afsd & in conson of the sum of £— now pd by the sd F. & G., at the reqt of the sd D. & E., to the sd A., B., & C., as psonal repves of the sd X. deced (the rect, &c.), the sd A., B., & C., as such psonal repves, & devisees in trust under the sd will of the sd X. as afsd, do resply hby grt & convey unto the sd F. & G., *pcels*, p. 377, *habendum to F. & G. in fee, upon trusts of settlemt, form XII.*, p. 395. IN WITS, &c.

PREC. XXX.

Contract
for sale.Acceptance
of title.Request to
convey.Origin of
purchase-
money.Wit-
nesseth.

Grant.

difficulty in the event of a sale as regards the covenants for title, as the trustees could not be expected to covenant as beneficial owners; this, however, might be met by a condition that the vendors shall only be required to covenant against incumbrances, without stating that they are trustees; see *ante*, p. 256. If the trust is not disclosed it may be recited that the purchase-money is paid "out of moys belonging to the sd, *pchasers*, on a jt acct," or else that they have contracted for the purchase "as jt tenants," and the conveyance will be "unto & to the use of the sd, *pchasers*, their hrs & assns, as jt tenants in equity as well as at law." As to the equities growing out of the trustees borrowing part of the purchase-money on mortgage, see *Re Pumfrey*, 22 Ch. D. 255; and as to fraudulent dealings by a trustee where the trust is not disclosed, see *Carritt v. Real, &c.*, *ubi sup.*

(b) If different parts of the settled funds are subject to different trusts, the particular fund out of which the purchase-money is raised should be recorded, which will be best done by the conveyance.

XXXI.PREC.
XXXI.
—**CONVEYANCE of FREEHOLDS under a TRUST for SALE,
the TENANT for LIFE being a CONSENTING PARTY. A
SHORT FORM, without RECITALS.**

PARTIES, A. & B., trees for sale (hinafter called the vendors), 1; *C., tenant for life* (hinafter called the life tenant), 2; *D., purchaser* (hinafter called the purchaser), 3; **WITNEETH** that in conson, &c. (the rect, &c.), & in psuance & exon of the trusts of an indre dated, &c., & made, &c., *the conve in trust for sale, [or, the will, dated, &c., & proved on, &c., of X., late of, &c. deced]*, the vendors, *as trees* of the sd settlemt [will], with the consent (hby testified) of the life tenant, hby grt unto the purchaser, *pcels*, p. 377, *habendum to purchaser in fee*, p. 393. [*Acknmt by A. & B. as to munimts*, p. 418.] **IN WITS, &c.**

XXXII.PREC.
XXXII.
—**CONVEYANCE of FREEHOLDS by TRUSTEES for SALE
under a WILL to a MARRIED WOMAN as her SEPARATE
PROPERTY under the MARRIED WOMEN'S PROPERTY ACT,
1882, the HUSBAND being a party (a). The persons
BENEFICIALLY interested in the PURCHASE-MONEY or
such of them as are NOT under DISABILITY confirming
the SALE and COVENANTING for the TITLE. VARIATIONS
where some of them are MARRIED WOMEN (b).**

PARTIES, A. & B., trees, 1; *C., D. " & E. his wife," F. " & G. his wife," & H., psons intted in the pchase-moy*, 2; *I.,*

As to con-
veyances to
married
women.

(a) As every married woman is now, by the Married Women's Property Act, 1882, ss. 1, 2, 5 (whether the marriage was before or after the Act), enabled to acquire, hold, and dispose of any property as a *feme sole* without the intervention of a trustee (see p. 490, note), property of any description

(b) As to making the beneficiaries parties in such a case, see 1 Dart, V. & P., 617. If E. & G. were married or their title accrued (as to which see *ante*, p. 490) since 1882, their husbands need not be parties, nor need they acknowledge the deed. Otherwise their acknowledgment is necessary *Franks v. Bollans*, 3 Ch. 717.

*pchaser, "the wife of X., of, &c.," 3; [X., husbd, 4]. Recite will of testor, settg out fully the trust for sale & rect clause (if any), p. 359, & statg shortly the trusts of the pchase-moy, so as to show the intts of the pties of the second pt; Death of testor & probate, p. 365, & testor's seisin, p. 360; Occurce of events upon wch the trust for sale was to arise; Contract for sale by A. & B. to I., p. 370, form iv.; "for the sum of £——, wch sum is intd to be pd by the sd I. out of moys belonging to her as her septe este, independently of her sd husbd," & she is desirous that the sd hds & premes shl be conveyed & assured to the uses & in mner hinafter expd: AND WHAS the sd pties hto of the second pt [or (as regards such of them as are married women) their sd husbds in their rt] are under the trusts of the sd will benefly entled to the pchase-moy of the hds & premes thby devised in trust for sale as afsd, in eql shares [or, in the shares & proportions followg (that is to say), &c., or, "to —— shares of the pchase-moy of the hds & premes, &c., the psons entled to the remaing —— shares thof, being under the age of 21 yrs"] : AND WHAS the sd pties hto of the second pt have agrd to concur in these psnts, for the pposes & in mner hinafter appearg: NOW THIS INDRE WITNETH that in psuance, &c., & in conson of the sum of £—— to the sd A. & B., pd by the sd I. out of moys belonging to her as her septe este, independently of the sd X. (the rect, &c.), they, the sd A. & B., as trees of the sd will, do hby grt, & the sd pties hto of the second pt as benefl owners, accdg to their respive intts as hinbfe appearg, do resply hby confirm unto the sd I., her hrs & assns, *pcels*, p. 377, *habendum to I., in fee*, as her septe ppty & este independently of the sd X.: *Provo restrictg liability of C., D., E., F., G., & H., under the statutory corts, to a share in the premes conveyed, correspondg to his or her**

PREC.
XXXII.
—
Recitals.

Interest of
bene-
ficiaries.

Agreement
to concur.

Wit-
nesseth.

Grant.

may now be conveyed to a married woman in the same manner as to a man, except, perhaps, where the conveying party is her husband (see p. 610 note); but it is better to express that it is to be her separate estate. The wife can also enter into any covenants which may be required (as in the case of leaseholds for the vendor's indemnity against the rents and covenants), see p. 491, note.

The only object in this case of making the husband a party is to obtain his admission that the purchase-money is the wife's separate estate; but it is doubtful whether the vendor could require this. It may also sometimes be desirable that the husband should join to enter into covenants.

PREC.
XXXII.

share in the pchase-moy, see p. 412, form iv. [Ackmnt by A. & B. as to munimts, p. 418]. IN WITS, &c.

XXXIII.

PREC.
XXXIII.

CONVEYANCE to one of the TRUSTEES and EXECUTORS of a will of FREEHOLDS purchased under a RIGHT OF PRE-EMPTION (a) given to him by the WILL, and of LEASEHOLDS held for a LONG TERM (b), the duration of which is UNKNOWN, with the CONCURRENCE of the BENEFICIARIES (c).

Recitals.
Will.

Seisin of
testator.

PARTIES, A., B., & C., trustees & exs & also beneficiaries, 1; D. & E., beneficiaries, 2; "the sd" C., pchaser, 3. Recite will of X., containg genl devise & beqt to A., B., & C., in trust for sale & diron of pccèds after paymt of debts, &c., among his chln, A., B., C., D., & E., with option to testor's sons in succession accdg to seniority to pchase, "the freehd messe & hds hby grted," at a valun to be made by valuers to be nominated by the trustees, & apptg A., B., & C. exs—death & probate, p. 365; AND WHAS the sd X. was at his dece seised in fee simple of the sd freehd messe & hds hby grted free from incumbces, & was also absolutely entled to the pce of land & hds hby assned, wch are of leasehd tenure, & (as is believed) free from rent & covts, &

Right of
pre-emp-
tion.

(a) As to the exercise of a right of pre-emption of this kind, see *Brooke v. Garrod*, 2 De G. & J. 62; *Austin v. Tawney*, L. R. 2 Ch. 143.

(b) The power given by the Conv. Act, 1881, s. 65, as amended by the Conv. Act, 1882, s. 11, to enlarge a long term into a fee simple, could not be acted on, for want of the means of showing that the case is within the Act.

Purchase
by trustees
or execu-
tors of the
trust
property.

(c) The concurrence of the beneficiaries is not necessary as to the freeholds, which are conveyed according to the trusts of the will; but as to the leaseholds is necessary, the sale being to one of the trustees and executors. As to purchases by trustees from themselves or their *cestuis que trust*, see *Lewin on Trusts*, pp. 534 *et seq.*; *Harvey v. Lambert*, W. N. 1888, p. 38. As to the purchase of the testator's estate by an executor who has not proved, see *Clark v. Clark*, 9 App. Cas. 733. As to a purchase by a solicitor from his client's trustee in bankruptcy, see *Luddy's Trustee v. Peard*, 33 Ch. D. 500. As to the purchase by a person in a fiduciary relation on a sale under the Court, see *Boswell v. Coaks*, 23 Ch. D. 302, 27 Ch. D. 424, 11 App. Cas. 232.

are held for a long term of yrs, but the origin & duron of such term are not known : AND WHAS the sd C. is the eldest son of the sd X. : AND WHAS in psuance of the trusts of the sd will, the sd A., B., & C., duly appted K., of, &c., & L., of, &c., to value the sd freehd messe & hds, & the same were valued by them at the sum of £——; AND WHAS the sd A., B., & C., by writg under their hands, dated, &c., psuant to the dirons of the sd will, duly offered the same messe & hds to the sd C. at the sd valuon price of £——, & the sd C., by writg, under his hand, dated, &c., or, “within the time in that behalf prescribed by the sd will,” duly decl'd his desire to pchase the sd messe & hds for the sd sum of £——, & reqtd the sd A. & B. to convey the same to him psuant to the sd will : AND WHAS the sd A. & B., as such exs & trees (d) as afsd, with the approbon & concurrence of the sd D. & E., have also agrd with the sd C. for the sale to him of the sd leasehd pce of land & hds for the sum of £——, at wch the same have been valued by the sd K. & L., for the ppose of such sale, on the instrons of the sd A., B., D., & E., such valuon havg been made as if the sd premes were freehd : AND WHAS the sd D. & E. have agrd to concur in these psnts in mner hinafter expd : NOW THIS INDRE WITNETH, that in psuance of the sd agreemt in this behalf & in exon of the trusts of the hinfte recited will of the sd X., & in conson, &c., *pchase-moy for freehds*, now pd by the sd C. to the sd A., B., & C., as trees of the sd will, with the approbon of the sd D. & E. (the rect, &c.), they the sd A. & B. as trees of the sd will, do resply hby grt & rele (e), & each of them the sd A., B., D., & E., & as benefl owner, as to one undivided fifth pt of the hds next hinafter desc'd & grtd, doth hby grt, rele, & confirm unto the sd C., *freehd pcels*, p. 377, *habendum to C. in fee*, p. 393, dischg'd from the trusts & provons of the sd will of the sd X. : AND THIS INDRE ALSO WITNETH, that in psuance of the sd recited agrmt in

FRMO.
XXXIII.

Valuation
of free-
holds

Offer and
acceptance.

Agreement
for sale of
long term.

Agreement
to concur.
Wit-
nesseth.

Granti.

Further
witnesseth.

(d) The sale of the leaseholds may be made by the parties as executors or trustees according to whether they have assented to the bequest to themselves or not ; but there is no practical objection to their being expressed to sell in both characters.

(e) This operates as a release by A. & B. of their estate in joint tenancy to C. their co-tenant. The Conv. Act, 1881, s. 50, does not apply to this case. The conveyance of the freeholds might have been effected by a grant by A., B., & C. to a grantee to the use of C.

PREC.
XXXIII.

Assign-
ment.
Haben-
dum.

this behalf, & in conson, &c., *the pchase-moy for leasehds* (the rect, &c.), the sd A. & B. as such exs & trees as afsd, do respby hby assn & rele, & each of them the sd A., B., D., & E., as benefl owner as to one eql undivided fifth pt of the hds next hinafter desc'd & assned, both hby assn, rele, & confirm unto the sd C., *pcels*, p. 377: To HOLD the same UNTO the sd C., his exs, ads, & assns, henceforth for all the term of yrs, este & intt for wch the same premes are held (a), dischg'd from the trusts of the sd will [*Cort by A. & B. with C. for prodon of deeds in the jt custody of A., B., & C., as exs & trees*, p. 417, form II. (b)]. IN WITS, &c.

XXXIV.

PREC.
XXXIV.

CONVEYANCE of FREEHOLDS by a TRUSTEE under a POWER OF SALE in a STRICT SETTLEMENT by REVOCATION and APPOINTMENT of the use (c), with the consent of the TENANT FOR LIFE. A JOINTRESS under a prior Settlement, and the TRUSTEE of a TERM for securing the JOINTURE concur for the purpose of RELEASING

(a) If there were any doubt as to the tenure, the conveyance should be framed so as to be effectual in either case.

Acknow-
ledgment.

(b) It is considered that the statutory acknowledgment would not be effectual in this case, as the documents are in the joint custody of A., B., and C., and the Act only applies where the acknowledgment is given by the person or persons in possession of the documents to another person, see p. 414, note; and that even the addition of an express declaration that the acknowledgment is intended to operate according to the statute in the same manner as if the deeds were in the possession of the parties giving it, might not remove the objection, as it is doubtful whether it would be binding on third parties, to whom the deeds might be afterwards delivered. It is better, therefore, in this case to insert an express covenant.

Form of
convey-
ance.

(c) The trustee having no estate. If the legal estate were in the trustee, he would convey by grant, as in Precedent XXXIII. The sale would now usually be made by the tenant for life under the statutory power conferred by the Settled Land Act, although the express power of sale is kept alive by s. 56; see note on the Act, p. 464, and Precedent XVIII., p. 467; in the present case as there is only one trustee of the settlement another would have to be appointed unless there is a provision to the contrary; but this Precedent may be used where the powers of the Act are not available, e.g., where they are suspended by an overriding trust for accumulation, see p.

the ESTATE and SURRENDERING the TERM, which is merged. THE TENANT FOR LIFE covenants to INDEMNIFY the PURCHASER from another overriding CHARGE and the DEATH DUTIES payable on the death of the JOINTRESS. VARIATIONS where the SALE is made free from INCUMBRANCES under the CONVEYANCING ACT, 1881, s. 5, and where the concurrence of the TRUSTEE of the TERM is dispensed with (d).

PREC.
XXXIV.

PARTIES, A., surviving tree of settlmt, 1; B., tenant for life, 2; C., widow, jointress, 3; D., tree of jointure term, 4 (e); E.,

458. Where the tenant for life can exercise the powers conferred by the Settled Land Act, his consent to the exercise of the express power of sale by the trustees is required by the Act, s. 56 (2). Where a tenant for life whose consent is necessary to the exercise of a power of sale has incumbered his life estate, his power of consenting is not destroyed, but the concurrence of the incumbrancer is necessary. *Re Bedingfield*, [1893] 2 Ch. 332.

(d) The main point in connection with this Precedent is as to whether family charges, such as jointures and portions, arising under a former settlement, can be overreached or provided for so as to give the purchaser a clear title. If the case is one in which the existing settlement, together with the prior settlement, can be treated as constituting one compound settlement under the Settled Land Act (as in *Re Ailesbury and Iveagh*, [1893] 2 Ch. 345, see above, p. 457, note), then according to that decision, upon the appointment by the Court of trustees of the compound settlement to receive the purchase-money, the conveyance of the tenant for life will, under s. 20 of the Act, override all the charges subsisting under the prior settlement, if in the nature of floating charges, and not sums specifically secured by mortgage; but as pointed out, *ante*, p. 457, note, the decision in *Re Ailesbury and Iveagh* cannot safely be acted on. If the existing settlement was made by the ultimate remainderman in fee under the prior settlement, after his estate had come into possession, or if the tenant for life under the prior settlement joined in resettling without preserving his old life estate, the powers of the Settled Land Act would not be available as a means of overriding the old charges, but the express power of sale in the old settlement might still occasionally remain alive so as to enable that object to be effected. See 32 Sol. J. 689. Failing this a clear title could not be made without an express release of the charges or provision being made for them under the Conv. Act, 1881, s. 5, or the Settled Land Act, 1882, ss. 5, 24, if applicable (see *infra*), and the purchaser might have to be content with an indemnity. As to removing a restraint on anticipation, under the Conv. Act, 1881, s. 39, to enable a married woman to consent to the sale, see *Re Ailesbury and Iveagh*, [1893] 2 Ch. 345.

As to
charges
arising
under a
prior
settlement.

The Conv. Act, 1881, s. 5, contains provisions for freeing land sold either by the Court or out of Court, from incumbrances, whether of annual or capital sums (see the definition of "incumbrances" in s. 2), on payment into

Sale of
land free
from
incum-
brances
under

(e) See note (a), p. 503.

PREC.
XXXIV.

Recitals.

Settlement.

Conv. Act,
1881.

pchaser, 5. Recital of strict settlemt of the " hds first hinafter descd & appted (togr with other hds)," subjt to a jointure

Court of an amount which the Court considers sufficient to provide for the charge, with a margin for expenses, interest, and contingencies (except depreciation of investments); whereupon the Court is empowered, either after or without any notice to the incumbrancer, to declare the land to be freed from the incumbrance, and to make any order for conveyance, or vesting order, proper for giving effect to the sale, and to give directions for the retention and investment of the money in Court. See *Milford, &c., Co. v. Mowatt*, 28 Ch. D. 402. As to the procedure under this section, see *Wolstenholme* C. A. p. 26. A vendor will not be compelled to make use of this provision to discharge an incumbrance, where it would involve hardship to him, *Re Great Northern R. C.*, 25 Ch. D. 788. Recourse to this enactment is sometimes useful, where a release of or sufficient indemnity against an incumbrance cannot be obtained. In that case the conveyance will contain recitals of the order or orders for payment into Court, and declaring the land free from the charge, and appointing a person to convey, or vesting order (where this is necessary, which it would only be to get in a legal estate), and the payment into Court, such payment being expressed to be part of the consideration for the conveyance. The person (if any) appointed to convey would join in the conveyance, and would, if a covenant against incumbrances by him is to be implied, be expressed to convey "under the said order of, &c.," see p. 399, and some words expressing that the property is free from the charge, would be added after the habendum.

Another mode of proceeding to avoid delay in completing the purchase, which would be available where the vendors are trustees, is to leave the application to the Court to be made after the conveyance, as indicated in the following clauses:—

Clauses for
payment
into Court
to provide
for charge
of portions.

"Recite creation of term for raising portions. Devise to trustees for sale subjt to the chge, & contract for sale.

"AND WHAS the sd sum of £—— raiseable for portions cannot be immedly dischgd, & it has been agrd that the sum of £—— pt of the sd pchase-moy shl be set apart by the vendors for the ppose of providg the sum of £—— to be pd into Ct under the Conveg & Law of Ppty Act, 1881, to answer the sd chge of portions & for paymt of costs, & that thrupon an order of the Ct shl be obtained dischging the hds comprd in the sd term of —— yrs from the sd sum of £——, & accdly that such trusts shl be decld as are hrinafter contd of the sum of £—— pt of the sd pchase-moy.

"Testatum, in conson of the sd sum of £——, the whole pchase-moy, to the vendors as such trustees as afsd pd by the pchaser (the rect, &c.), Convrce to pchaser in fee, dischgd by means of the paymt into Ct hinafter provd for from the sd sum or sums not exceedg the sum of £—— raiseable for por-

rent-charge of £—— limd to C. & a term of —— yrs for securg the same, vested in D., & to a ppal sum of £—— & intt chged thron by an indre, dated, &c., & made, &c., for the portions of the yor chln of K., all of whom are now infants under

PREC.
XXXIV.
—

tions under the sd indre of, &c., & all intt payable in respt thof.

“ And it is hby agrd & decld & the vendors do hby covt with the pchaser, his hrs & assns, that the vendors shl forthwith out of the sd pchase-moy of £——, set apart the sum of £——, & deposit the same in their jt names in the —— Bank in trust to be applied as hinafter provd, & will hold the same in trust accdly, & will forthwith apply by summons or orwise to the Chancery Divon of the High Ct of Justice under the provons of the Conveg & Law of Ppty Act, 1881, for an order, & will endeavour to obtain an order givg leave to pay the sum of £—— into Ct to answer the sd sum of £—— raiseable for portions, & dischgng the premes comprd in the sd term from the sd sum of £—— & the intt thof & all claims in respt thof, & will psuant to the sd order when obtained, apply the sd sum of £—— in makg paymt into Ct of the sd sum of £——, & in paying the costs of & consequent on such applicon, the vendors retaing & applyg the balce (if any) as pt of their trust este, & that in case an applicon shall not within six calr months from the date hrof be made by the vendors for such order, it shl be lawful for the pchaser to apply for & obtain such order, & thrupon the sd sum of £—— shl be applied by the vendors in makg the paymt into Ct authorised by such order, & in paying all costs & expses incurred by the pchaser in & about obtaing the same, & that the sd sum of £—— shl not witht the consent in writg of the pchaser, be applied for any other ppose than the ppose hinfte specified.”

Under the S. L. Act, 1882, ss. 5, 24, a mortgage or other incumbrance may, with the consent of the incumbrancer, be charged on another part of the estate in exoneration of the part sold; see *Re Stamford*, 43 Ch. D. 84, and a precedent for this in Vol. II., MORTGAGES.

Power in
Settled
Land Act
to shift
charges.
Satisfied
term.

If the trustee of the jointure term has never acted or incurred any costs, his concurrence would be unnecessary; as on the release of the jointure, the term would, as to the land released, cease under the proviso for cesser (if any), or under 8 & 9 Vict. c. 112; but he is usually made a party to obtain his admission that he has no claim for costs, so as to preclude any question as to the term being satisfied. As to what is a satisfied term under the Act, see *Anderson v. Pignet*, 8 Ch. 180.

PREC.
XXXIV.
—

Purchase
of land
under
power.

Payment
off of
charges.

Agreement
to concur.

Jointure
rent-
charge to
be secured
on pur-
chase-
money.

*the age of 21 yrs, & to anor ppal sum of £——, &c., “wch rent-
chge & term & respive ppal sums & intt override & are para-
mount to the uses & powers of the sd settlemt,” settg forth the
uses of the settlemt up to & includg the este of B., “with divers
remrs over,” & the power of sale & of revocon of the uses, &c.,
& the power to give rects (if any), & (as pt of the ppty now to be
conveyed was pchased with the pceeds of a sale under the power)
also referrg to the trust for re-investmt of the sale-moys in the
pchase of other land to be conveyed to the uses of the settlemt:*
*Death of L., one of the trees of the settlemt: AND WHAS in the
yr —— the sd A., as survivg tree of the sd indre of settlemt,
& with the consent of the sd B., applied certn moys in his
hands arisg from the sale of pt of the hds comprd in the sd
settlemt in the pchase of certn hds situate in the Coy of ——,
includg the hds secondly hinafter descd & appted. Recital
of convce of the last-mentd premes to the uses of the settlemt:*
*Contract for sale, p. 370, form IV. : AND WHAS the sd ppal sum
of £—— wch was a chge on the sd premes at the date of
the sd settlemt of, &c., & the intt thron was in the yr ——
pd off out of moys arisg from a sale of pt of the sd settled
estes, & the only chges, estes, or intts now subsistg upon or in
the sd hds first hinafter descd & appted, wch are prior & para-
mount to the uses of the sd settlemt, & wd therefore not be
over-reached by an exercise of the power of sale thrin contd as
afsd, are the sd jointure rent-chge of £——, limd to the sd C.
by the sd ——, prior instrumt, & the sd term of —— yrs,
vested in the sd D., for securg the same, & the sd sum of £——
chged thron for portions by the sd, &c. : AND WHAS the sd C.
has [C. & D. have resply] agrd to concur in these psnts, for
the ppose of releasg the sd hds first hinafter descd & appted
from the sd rent-chge (wch is secd on other ppty of ample
value), [& the sd term for securg the same] : [AND WHAS the
paymt of the sd jointure rent-chge is intd to be secd by a chge
upon the sd pchase-moy & the investmts to be made thof under
the trusts of the sd indre of settlemt, & the income thof in
substiton for the sd hds & premes hby reled thfrom, wch chge
is to be effected by an indre already engrossed & intd to be
exted immedly after these psnts, but so that the exon of such
indre shl not be deemed necy to the validity of the rele hby
made, or be material to the title of the premes first hinafter*

descd & appted (a)]: AND WHAS the sd B. has agrd to enter into such covt as is hinafter contd for indemnifying the sd E. in respt of the sd sum of £—— & intt, wch is seed on other ppty of ample value, & in respt of the duties payable upon the dece of the sd C.: NOW THIS INDRE WITNETH that in psuance of the sd recited contract & for effectg the sd sale, & in conson, &c., *pchase-moy pd to A.* (the rect, &c.), the sd A. as survivg tree of the sd indre of settlemt (b), in exercise of the power for this ppose in the same indre, & in the sd indre of, &c., *the convce of after-pchased lands*, by referce to the sd indre of settlemt, resply contd as afsd, & of every other power enablg him in this behalf, by the diron of the sd B. directg as benefl owner (b), both hby revoke & make void all the uses, trusts, powers, & provons, by & in the sd indre of settlemt, & by & in the sd indre of, &c., by referce thto, resply, limd, decld, & contd of & concerng the respive hds first & secondly hinafter descd & appted, & doth hby appt that, *pcls in two pts*, p. 377, shl henceforth go & remain To THE USE of the sd E., his hrs & assns: AND THIS INDRE FURTHER WITNETH that in psuance of the sd agrmt in this behalf & in conson of the premes the sd C., as mtgee (c), at the reqt of the sd B., doth hby rele [& the sd D., as tree, at the reqt as well of the sd B., as of the sd C., doth hby surrender & assn] unto

PREC.
XXXIV.

Indemnity
against
death
duties.
Wit-
nesseth.

Revocation.

Appoint-
ment.

Further
witnesseth.

Release
from
jointure.

(a) Care should be taken that the deed giving the substituted security is not made a title deed.

(b) This implies a covenant against incumbrances by A., and full covenants for title by B., see pp. 399, 400; as to the mode of implying the covenants for title, if B. has only power to consent to or to request the sale, see p. 409, Form XI., and note (i). The implied covenant for right to convey in this Precedent is inaccurate, by reason of C. & D. joining in the conveyance, but not by the direction of B., see p. 409, note; and it might be better to import B.'s covenants by a separate clause, see p. 410. The usual form of express covenant for right to convey would be, "that he, the sd B., now has power to give such diron, or, 'consent,' or, 'to make such reqt,' as afsd, & that the sd A. now has power to appt the sd premes hby appted, & every pt thof, to the use of the sd E., his hrs & assns, in mner afsd." If B.'s covenants, express or statutory, extend to the acts of a prior owner, the proviso restricting them (see p. 411, Form II., and note (h)) should be inserted.

Covenants
for title.

(c) It might be better to make the jointress give an express covenant against incumbrances; or the statutory covenant might be incorporated expressly, as at p. 410.

PREC.
XXXIV.
—

Covenants
by tenant
for life to
indemnify
purchaser
against
charge and
death duty
(b).

the sd E., ALL & SINGR the hds & premes first hinfte descd & hby appted, to the intent that the same may henceforth be dischgd from the sd jointure rent-chge of £—— p.a. limd or secd to the sd C. by the sd (a), &c., & from every pt thof, & from all powers & remedies for securg the same, & all claims & demands in respt thof, [& that the sd term of —— yrs may become absolutely merged & extinguished in the freehd & inhance of the same premes] [*or if D. is not a pty*, that the sd term of —— yrs may cease as a satisfied term]; *Cort by B. with E.*, that he the sd B., his hrs, exs, or ads, will at all times hrafter keep the sd E., his hrs, exs, ads, & assns, effectually indemnified from & agst the sd ppal sum of £—— chgd on the sd premes firstly hby appted under or by virtue of the sd indre, &c., & from & agst all intt due or to accrue due in respt thof or any pt thof, & from & agst all duties wch may become payable in respt of the sd premes firstly hby appted, or any pt thof, upon the death of the sd C., & from & agst all claims, demands, actions, pcdgs, costs, & expses whatsr, for or in respt of the sd ppal sum & intt & duties, or any pt thof resp'y. *Acknmt & undertakg by B. as to title deeds*, p. 418. IN WITS, &c.

XXXV.

PREC.
XXXV.
—

CONVEYANCE of FREEHOLDS by TENANT for LIFE and TENANT in TAIL as part of a FAMILY ARRANGEMENT (c).

PARTIES, A., tenant for life, 1; B., tenant in tail, 2; C., 3.
Recitals. *Recite seisin of A. & B. for their respive estes*, p. 363. AND

Indemnity
as to suc-
cession
duty.

(a) See page 54, note (b).

(b) The covenant of indemnity against the death duties, which will become payable on the death of the jointress, should be inserted, as the jointure overrides the settlement, notwithstanding *Dugdale v. Meadows*, 9 Eq. 212, 6 Ch. 501; see above, p. 469, note (f). If the case admits of it, the indemnity might be strengthened by a charge upon or grant of powers of distress and entry on other land, whether already subject to the charges or not; but see as to such powers, p. 306, note. See further as to succession duty and estate duty, *ante*, p. 469.

(c) This, though not, strictly speaking, a conveyance on sale, may conveniently find a place here. As to family arrangements, see p. 56, note (a). The conveyance must be enrolled within six calendar months after execu-

WHAS in order to make provon for the sd C. & as pt of & in
 conson of a family arrangemt, the other pt whof is contd in &
 has been fully carried into effect by an indre bearg even date
 with & exted bfe these psnts & made, &c., the sd A. & B. are
 desirous & have agrd to convey the sd hds to the sd C. in
 mner hinafter expd : AND WHAS although the sd indre of even
 date hwith is hinbfe refd to as formg a valuable conson for
 the convce hby made, it is nevs the intention of the sd A. &
 B. (as they do hby exply declare) that these psnts shl operate
 & take effect independently of that indre, & so that the
 same shl in no wise form pt of the title to the sd hds hby
 conveyed (d) : NOW THIS INDRE WITNETH that in
 psuance of the sd arrangemt & in conson of the premes the
 sd A., as benefi owner, as to his este for his life in the hds
 hinafter descd, doth hby grt, & the sd B., as benefi owner, as to
 the remr in fee simple expectant upon the sd life este in the
 same hds & with the consent of the sd A. as protector of the
 settlemt, doth hby grt & confirm unto the sd C., *Pcels*, p. 377,
Habendum, Unto the sd C., his hrs & assns, dischged from the
 sd este tail & all other estes tail of the sd B. in the same
 premes & all remrs, reversions, estes, rts, intts & powers to
 take effect after the determinon or in defeasance of such este
 tail or estes tail To THE USE of the sd C., his hrs & assns. IN
 WITS, &c.

PREC.
XXXV.

Family
arrange-
ment.

Wit-
neseth.

Grant by
tenant for
life and
tenant in
tail.

Haben-
dum.
Discharged
from estate
tail.

tion, see the Fines and Recoveries Act, 1833 (3 & 4 Wm. 4, c. 74), s. 41. As to deeds barring entails, see *infra*, DISENTAILING DEEDS.

(d) See p. 505, note (a). In spite of this recital the other deed might possibly be called for to verify the statement that it created a valuable consideration, so as to prevent this deed from being impeachable as voluntary; and possibly also to show that the consideration did not make this deed liable to *ad valorem* stamp duty; but this might be avoided by getting the stamp adjudicated. So far as the implication of covenants for title by the use of the words "as beneficial owner" is concerned, it is conceived that a deed expressed to be for valuable consideration (*e.g.* "for divers good & valuable consons") though not so in fact, would be effectual against the grantor by estoppel; but where there is any doubt as to the deed being for valuable consideration, it is better expressly to incorporate the statutory covenants, see p. 410, Form XIII.

Considera-
tion con-
tained in
separate
deed.

Covenants
for title in
voluntary
deed.

XXXVI.

PREC.
XXXVI.

**SURRENDER of FREEHOLDS by TENANT FOR LIFE to
REMAINDERMAN in fee (a).**

Contract.

Wit-
nesseth.

Haben-
dum.

PARTIES, A., tenant for life, 1; B., remainderman, 2. Recitals showing the titles of the parties, p. 363, form VIII. or IX. AND *WHAS* the sd A. has agrd with the sd B. for the sale & surrender to him of the life estate of the sd A., in the hds hby assured for the sum of £——. *NOW THIS INDRE, &c., conson, rect,* the sd A., as benef owner, doth hby grt & surrender unto the sd B., *pcels*, p. 377: To HOLD the same UNTO & TO THE USE of the sd B., his hrs & assns, for & durg the life of the sd A., to the intent that the estate for life of the sd A. in the sd premes, may merge & be extinguished in the reversion & inhance thof, & that the sd B. may become seised of, or entled to the same premes for an estate of inhance in fee simple in posson. In WITS, &c.

XXXVII.

PREC.
XXXVII.

**CONVEYANCE of REVERSION in fee of FREEHOLDS to a
PURCHASER. COVENANT by PURCHASER to pay DEATH
DUTIES (b).**

Recitals.

PARTIES, A., vendor, 1; B., purchaser, 2. Short recital of title of A. in reversion expectant on the dece of X., the tenant

Effect of
union of
life estate
and fee on
powers of
sale, &c.

(a) Although a tenant for life cannot divest himself of his powers under the Settled Land Acts, even by an out and out conveyance of his life estate (see the Act of 1882, s. 50 (1)), it seems that in the case in the text the statutory powers would be gone by the union of the life estate with the reversion in fee, and it is a question whether they could be kept alive by an express declaration against the merger of the life estate; and if not, any charges of jointures or portions still subsisting under the settlement could not afterwards be overridden on a sale, unless the settlement contains an express power of sale, which might still be available, although the consent of the tenant for life is required to its exercise; see *Alexander v. Mills*, 6 Ch. 124.

(b) On a purchase of a reversion the powers of sale and leasing given by the Settled Land Act, 1882, to the tenant for life or other limited owner, which he cannot assign or release or contract not to exercise (s. 50), should be borne in mind. His statutory power of sale overrides any previous sale by the reversioner; *Wheelwright v. Walker*, 23 Ch. D. 752. As to whether

for life, p. 362: AND WHAS the sd A. has agrd with the sd B. for the sale to him for the sum of £—— of the reversion & inhance in fee simple of the sd A., expectant on the dece of the sd X. of & in the sd hds, & it has been further agrd that the duties payable in respt of the sd premes upon the dece of the sd X., shl be pd by the sd B., & that he shl enter into the covt in relon thto hinafter contd: NOW THIS INDRE WITNETH that, &c., *conson* (the rect, &c.), the sd A. as benefi owner doth hby grt unto the sd B., *pcels*, p. 377: To HOLD the same UNTO & TO THE USE of the sd B., his hrs & assns, subjt to the este for life of the sd X. in the same premes: *Covt by B. to pay death duties*, p. 421 (c). IN WITS, &c.

PREC.
XXXVII.

Contract.

Wit-
nesseth.

Grant.

To pur-
chaser in
fee.

XXXVIII.

RELEASE of REVERSION *in fee* of FREEHOLDS, *expectant on an ESTATE FOR LIFE, to the TENANT FOR LIFE.* COVENANT *to pay DEATH DUTIES (d).*

PREC.
XXXVIII.

PARTIES, A., *remrman*, 1; B., *tenant for life*, 2. *Recitals as in the last Precedent, mutatis mutandis.* NOW THIS INDRE WITNETH, &c., *conson* (the rect, &c.), the sd A., as benefi owner, doth hby grt & rele unto the sd B., *pcels*, p. 377: To HOLD the same UNTO & TO THE USE of the sd B. his hrs & assns subjt to the este for life of the sd B. in the sd premes, to the intent that the same may merge & be extinguished in the revon & inhance thof, & that the sd B. may be henceforth seised of or entled to the fee simple & inhance in posson thof; *Covt by B. to pay death duties*, p. 421 (e). IN WITS, &c.

Wit-
nesseth.Haben-
dum.

it can be restrained or interfered with, see *Thomas v. Williams*, 24 Ch. D. 558. As to sales of reversions, see 31 & 32 Vict. c. 4, and cases decided thereunder, enumerated in the notes to *Chesterfield v. Janssen*, 1 W. & T., L. C., 624; *Fry v. Lane*, 40 Ch. D. 312.

Sales of
reversions.

(c) See note, p. 421. If A. is parting with only part of his reversion, it will have to be considered how the duties are to be borne.

(d) See last page, note (a), as to effect of union of the life estate with the fee on the statutory or other powers of sale.

(e) See note (g), p. 421.

XXXIX.

PRRC.
XXXIX.
—

CONVEYANCE of FREEHOLDS by equitable TENANT FOR
LIFE and REMAINDERMEN, and a TRUSTEE in whom the
legal estate is outstanding.

Recitals. *PARTIES, A., tenant for life, & B., C., & D., remrmn, 1; E., tree, 2; F., pchaser, 3. Recite will of X., under wch the ppty has become vested in E., in trust for A. for life, with remr to B., C., & D., as tenants in common in fee: Death of testor & probate, p. 365: Contract for sale, p. 371, form VIII.; AND WHAS it has been agrd that the sd pchase-moy shl be pd to the sd pties hto of the first pt, jtly & upon their jt rect; [AND WHAS the succession duty payable upon the dece of the sd A. in respt of the sd premes hby assured, has been compounded for & pd & satisfied by the sd B., C., & D., prior to the exon of these psnts] (a): NOW THIS INDRE WITNETH that in psuance, &c., & in conson of the sum of £——, to the sd pties hto of the first pt pd by the sd F. (the rect, &c.), the sd E., as tree, by the diron of the sd pties hto of the first pt, doth hby grt, & the sd A. as benefl owner, as to the este for his life, & all other, if any, his este or intt in the hds hby assured, doth hby grt, & the sd B., C., & D., each of them conveying as benefl owner of one eql third pt of the revon in fee simple [or, if they are entld uneqlly, as benefl owner of the pt or share of or in the sd premes to wch he or she is entld as hinfte appears in revon] expectant on the life este of the sd A. in the sd premes, & as to all other, if any, their respive estes or intts thrin, do resply hby (b) grt & confirm unto the*

Payment of succession duty.

Wit-nesseth.

Grat.t.

Succession
duty.

(a) If the duty is not paid in advance, a covenant for payment should be inserted; see p. 421. As to the commutation of duty in respect of a reversion, see the Succession Duty Act, 1853, s. 41; and as to personalty, see 43 Vict. c. 14, s. 11. No estate duty will be payable on A.'s death.

(b) If the interests of the parties of the first part are shown by the recitals, they may convey as follows (see p. 407, note):—

“And they, the sd pties hto of the first pt, each of them conveying as benefl owner of the respive este, share, or intt in the hds hby assured, to wch he or she is entld, as hinfte appears, & all other (if any) his or her este or intt thrin, do resply hby, &c.”

sd F., *pcels*, p. 377, *Habendum to F. in fee; [Acknmt & undertakg by A. as to munimts in his posson & retained by him relatg to the fee, or to his life este only, & by B., C., & D. resply as to any munimts in the posson of & retained by them resply relatg to their rexonary intts only, p. 418] (c). In WITS, &c.*

PREC.
XXXIX.
—

XL.

CONVEYANCE of FREEHOLDS by TENANTS IN COMMON
*having various interests. VARIATIONS where one of the
vendors is an INFANT (d).*

PREC. XL.
—

*PARTIES, A., owner of share, 1; B., & C., his wife, owners of
share, 2; D. & E., trustees for sale of share, 3; F., tenant for*

(c) See p. 414, note. The acknowledgment, &c., of the tenant for life as to the muniments relating to the fee will of course suffice, without the reversioners joining in it, and their doing so would be, in fact, inefficacious, as the deeds are not in their possession; see p. 414, note.

(d) In the case of the married woman C., it is assumed that the marriage and acquisition of the share were both prior to 1883, so that the law previous to the Married Women's Property Act, 1882, applies. As to conveyances by married women, see p. 486, note. As to the case of the sale by the executor G. under a power of sale to pay debts, see p. 439, note. As to the share of H. & K., it might be sold by H. as tenant for life under the Settled Land Act, 1882, the purchase-money being paid to the trustees of the settlement; but the course adopted in the text is simpler, as it enables trustees to be dispensed with. As to succession duty on the share, see p. 469, note.

As to
mode of
conveyance
by parties
with
various
interests.

If one of the vendors is an infant, his share may be conveyed by the "trustees of the settlement," if any, or otherwise by a person appointed by the Court, under the Settled Land Acts (see note, p. 465; and Precedent XXI., p. 474); which is the better plan; or with the sanction of the Court under the Settled Estates Act, 1877, if the case is within that Act (as to which see *Re Sparrow*, [1892] 1 Ch. 412); or (according to a plan sometimes adopted), the infant might be made a party, the other vendors or some of them covenanting for his execution, and his share of the purchase-money being paid to them or retained by the purchaser in the meantime. The following additions to the above Precedent are applicable to that case:—

As to
infant.

"AND WHAS it has been agrd that the sd, *infant*, shl be made a pty to these psnts to the intent that he shl exte the same when he shl have attnd the age of 21 yrs, & that the sd other pties hto of the — pts shl enter into the covt hinafter contd to procure such exon by him & orwise as hinafter mentd, AND that the sum of £—— being the share

Recital as
to convey-
ance of
share of
infant.

PREC. XL. *life of last-mentd share, 4; G., exor with power of sale of share, 5; H. & K., tenant for life & remrman of share, 6; L. & M. coparceners of share, 7; N., pchaser, 8; Recite will of X., devisg premes to his chln at 21, &c., as tenants in common in fee; Death & probate, p. 365; That X. left issue six chln all of whom attained 21, namely, A., C. the wife of B., F., P., Q. & R.; Settlemt on marre of F. conveying his share to trees, D. & E., in trust for [or with a power of] sale with his consent; Will of P. containg a chge of debts implying a power of sale in the exor, G.; Death & probate; Will of Q. devisg his share to H. for life, remr to K. in fee; Death & probate; Death of R. intestate leavg L. & M., his two daurs, coheireesses; [AND WHAS by the means afsd the sd pties hto of the first seven pts are now entled to or have power to dispose of the sd hds & premes in the respive shares & mner followg (that is to say), the sd A. is entled to one eql*

Recitals.

How shares are now vested.

of the sd, *infant*, of the sd pchase-moy shl in the meantime be retained by the sd N. & shl be pd to the sd, *infant*, his hrs or assns with intt at the rate of £—— p.c. p.a., from the date of these psnts, upon these psnts being duly exted or confirmed by & made bindg on the sd, *infant*, his hrs or assns as hinafter mentd, & that the sd N. shl be entled to the posson or rents & profits of the entirety of the sd premes from the date of these psnts.

Covenant that infant shall convey when of age.

“AND each of them the sd pties hto of the first pt, other than the sd, *infant*, doth hby covt with the sd N., his hrs & assns, that the sd, *infant*, upon attaing the age of 21 yrs, or in the event of his death, his hrs & also any other pson or psons claimg under him any este or intt in his sd share of the sd premes hby assured, shl forthwith or at any time thrafter upon the reqt of the sd N., his hrs or assns, but at the cost of the sd pties hto of the first pt, or some or one of them, & upon paymt of the share of the sd, *infant*, in the sd pchase-moy with intt as afsd, & witht any further sum of moy or conson being pd by or claimed from the sd N., his hrs or assns, exte these psnts, or such other assurece or instrumt for confirmg these psnts & the assurece & covts hinbfe contd, & makg the same bindg on the sd, *infant*, & his hrs & all psons claimg under him as afsd, as by the sd N., his hrs or assns, may be reasbly required.”

undivided sixth share in his own rt; the sd B. & C. are entled to one other sixth share in rt of the sd C.; one other sixth share is vested in the sd D. & E. as trees of the sd settlemt of, &c., in trust, with the consent of the sd F. to sell the same & give rects for the pchase-moy thof; the sd G., as exor of the sd P., deced, & by virtue of the chge of debts contd in his sd will as afsd, has power to sell one other sixth share & to give rects for the pchase-moy thof; one other sixth share is vested in the sd H. durg his life with remr to the sd K., in fee simple under the sd will of the sd Q. deced; & the remaing one sixth share is vested in the sd L. & M. in coparcenary as coheireesses of the sd R. deced (a)]; AND WHAS the sd pties hto of the first seven pts by virtue of their respive estes, powers, & intts, & as to the sd D. & E. in exon of the trust for sale contd in the sd indre of settlemt of, &c., with the consent (hby testified) of the sd F., & as to the sd G., in exercise of the power of sale vested in him under the will of the sd P. as afsd, have resply contracted with the sd N. for the absolute sale to him of the entirety of the sd hds & premes hby assured & the fee simple in posson thof, for the sum of £——: NOW THIS INDRE WITNETH that in psuance, &c., & in conson of the sum of £—— now pd by the sd N. as follows, namely, the sum of £—— being one eql 6th pt thof to the sd A., the like sum of £—— to the sd B. & C., the like sum of £—— to the sd D. & E., the like sum of £—— to the sd G., the like sum of £—— to the sd H. & K., & the sum of £—— being one eql 12th pt thof to each of them the sd L. & M. (the rect of wch sd sevl sums so pd to them resply as afsd the sd sevl pties hto of the 1st, 2nd, 3rd, 5th, 6th, & 7th pts do resply hby acknowe (b)), the sd A. as benefl owner as to one eql 6th pt of the hds hinafter descd & assured doth hby grt, AND the sd C. as benefl owner as to one other eql 6th pt of the same premes with the

PREC. XL.

Agreement
for sale.Wit-
nesseth.Considera-
tion.Convey-
ance of
specified
shares.

(a) The recital in brackets is unnecessary, but where the previous recitals are complicated it is sometimes useful to sum up the result in this way; and this recital might be made the basis of a short recital of the title, so as to avoid detailed recitals of the various instruments and events.

(b) If the vendors are all beneficial owners the purchase-money need not be apportioned by the deed; see p. 376, note.

PREC. XL.

General

concurrce of the sd B., her husbd, doth hby grt, & the sd B., as benefl owner as to the same one 6th pt doth hby grt & confirm, AND the sd D. & E. as trees as to one other eql 6th pt of the same premes with the consent (hby testified) of the sd F., do hby grt, & the sd F. as benefl owner as to the sd last mentd one 6th pt doth hby convey & confirm, AND the sd G. as psonal repve of the sd P. deced as to one other eql 6th pt of the sd premes, & in exercise of the power of sale vested in him the sd G. by virtue of the sd will of the sd P. & of every or any other power enabl g him in this behalf doth hby appt & convey, AND the sd H. as benefl owner as to the este for his life in one other eql 6th pt of the sd premes doth hby grt, & the sd K. as benefl owner as to the revon or remr in fee simple expectant on the life este of the sd H. of & in the same one 6th pt doth hby grt, AND each of them the sd L. & M. as benefl owner as to one moiety of the remaing one eql 6th pt (being one eql 12th pt of the entirety) of the sd premes doth hby grt (a), AND all the sd pties hto of the first seven pts as

Covenants
for title.

(a) As to the covenants for title, &c., implied, see p. 398 *et seq.*, note, p. 407. It would in this case be simpler and shorter to frame the conveyance in the following form, the implied covenants of the beneficial owners being qualified by a proviso at the end of the deed, as follows (see p. 401, note ; p. 411); and in a case in which the interests of the parties are uncertain (*e.g.*, where they depend on a will of doubtful construction), this mode of conveyance must almost necessarily be adopted. See the next note:—

Form of
conveyance
by persons
having
various
interests.

“The sd respive pties hto of the 1st, 2nd, 4th, 6th, & 7th, pts as benefl owners, as & accdg to their respive shares, estes, intts & powers in or over the hds hinafter descd, &c., do resply hby grt, appt, & convey, & the sd D. & E. as trees of the sd indre of settlemnt of, &c., as to one eql 6th pt of the same premes & with the consent (hby testified) of the sd F. do hby grt, AND the sd G. as psonal repve of the sd P. deced, as to one eql 6th pt of the sd premes & in exercise, &c., doth hby appt & convey unto, &c.

Proviso
restricting
implied
covenants
for title.

“Provd always, & it is hby agrd & decl d that the covts for the title to & further assurse of the sd premes hby assured wch are implied by the assurse hby made on the pt of the sd respive pties hto of the 1st, 2nd, 4th, 6th, & 7th pts shl be limd as follows, namely, the covts of each of them the sd respive pties of the 1st & 2nd pts to one eql 6th pt of

to all other (if any) the shares, estates, or intts of or in the sd premes, or any pt thof, wch they have resply power to convey or dispose of, do resply hby grt, appt, & convey (b), unto the sd N.; *pcels*, p. 377; *Habendum to N. in fee*. [Covt for paymt of succon duty on the death of H., p. 421] [Acknmts & undertakgs as to deeds retained, see p. 418 et seq.] IN WITS, &c.

PREC. XL.

words of conveyance.

Death duties.

XLI.

CONVEYANCE of COPYHOLDS by EXECUTORS or TRUSTEES under a WILL containing a mere DIRECTION for SALE of the COPYHOLDS, or a devise of them to such USES as the TRUSTEES shall appoint, and subject thereto to them in TRUST for SALE (c).

PREC. XLI.

PARTIES, A. & B., *exs* [trees], 1; C., *pchaser*, 2. Recite will, settg out fully the diron to the *exs* to sell the copyhds [or

Recitals.

the sd premes, the covts of each of the sd F. & H. to the este for his life in one eql 6th pt thof, the covts of the sd K. to the revon or remr in fee simple expectant on the dece of the sd H. in the same one 6th pt, & the covts of each of them the sd L. & M. to one eql 12th pt of the sd premes."

(b) Where the particular share or estate which each party is intended to convey is defined, as in the text, in order to limit the operation of the statutory covenants, there may be a considerable risk of miscarriage, through the interests of the parties being misstated, and the operation of the conveyance being thereby restricted; as the Conv. Act, 1881, s. 63, making a conveyance pass "all the estate" of the conveying parties might be held to be excluded by the expression of a contrary intention. The above general words of conveyance, which imply no additional covenant, are therefore added, see p. 407, note (g); and compare Precedent XXXIX.

Importance of inserting general words of conveyance.

(c) If the trustees or executors sell before the heir or devisees in trust are compelled by the lord to obtain admittance, the purchaser is entitled to be admitted without a previous admittance of the heir or trustees, thus saving a fine, whether the will contains a mere direction to the executors and trustees to sell (*The Queen v. Wilson*, 3 B. & S. 201), or a devise to such uses as the trustees should appoint (*Glass v. Richardson*, 9 Ha. 698, 2 De G. M. & G. 658). The conveyance is therefore effected by a deed operating by way of bargain and sale or appointment, perfected by admittance, without any surrender.

Admission of purchaser.

As the sale in this case is made under a direction or trust for sale, the case is within the Settled Land Acts, see the Act of 1882, s. 63, and the

PREC. XLI. *the devise to such uses as the trees shl appt, & in default to them in trust for sale] & the rect clause (if any), [& the apptmt of exs], death & probate, & testor's seisin, p. 359. AND WHAS the sd A. & B., psuant to the diron for sale contd in the sd will as afsd, have agrd, &c., contract for sale, p. 370, "of the copyhd hds hby assured": NOW THIS INDRE WITNETH that in psuance, &c., & in conson, &c. (the rect, &c.), they the sd A. & B. as such psonal repves [trees] as afsd & in psuance of the diron for sale in the sd will contd as afsd, & of every or any power or authority enablg them in this behalf, do resply hby bargain, sell, & appt unto the sd C., pcels, p. 377, To HOLD the same UNTO & to THE USE of the sd C., his hrs & assns, accdg to the custom of the sd manor, by & under the rents, fines, heriots, suits, & services, due & of rt accustomed for the same. In WITS, &c.*

Wit.
nesseth.

Convey-
ance.
Haben-
dum.

XLII.

PREC. XLII. *CONVEYANCE of COPYHOLD TENEMENT on the purchase thereof by the TENANT FOR LIFE of the MANOR so as to MERGE the TENURE (a).*

Recitals. *PARTIES, A., copyholder, 1; B., tenant for life of manor, 2; C. & D., trees of manor, 3; Recite will devisg a manor & estes*

Amendment Act of 1884, ss. 6 (1) and 7, and the consent of the tenant for life of the proceeds of sale is not required, see p. 466, note; & *fortiori* if the sale were for payment of debts.

As to enfranchisement, see the Copyhold Act, 1894, Parts I. and II.

As to
convey-
ance of
copyhold
tenement
to lord of
manor.

(a) On the purchase of a copyhold tenement by the lord of the manor, the conveyance is properly made by deed of surrender as above, which should be entered on the court rolls. That the copyhold tenure can be effectually extinguished by a deed of release by the copyholder to the lord, see *Blemmerhassett v. Humberstone*, Hutt. 65, Sir William Jones, 41; *Zinsan v. Talmadge*, Pollexfen, 568, 569; Watkin on Copyholds. If the manor is in settlement, the conveyance should be made to the trustees, if they have the legal estate, or otherwise (as in this case) to the tenant for life. Another method is for the tenant on the court rolls to surrender the copyhold tenement to the uses of the settlement of the manor. Having regard to the Settled Land Act, the purchase should be treated as made by the tenant for life, and the purchase-money will be paid by the trustees by his direction; see p. 477, note. The trustees, though in this case they have no concern

to uses under wch B. is tenant for life in posson & containg usual powers of enfranchisemt & sale & exchange & reinvestmt with consent of tenant for life: Death & probate: AND WHAS sales of portions of the sd estes devised by the sd will & enfranchisemts of copyhd tenemts held of the sd manor thby devised have taken place under the powers of the sd will, or of the Settled Land Acts, 1882 to 1890, or orwise: *Recite seisin of A. of a copyhd tenemt held of the manor:* AND WHAS the sd B. has agrd with the sd A. for the pchase of the customary fee simple & inhance of & in the hds hby surrendered & releed at the price of £——, wch is intd to be pd by the sd C. & D. by diron of the sd B., out of moys in their hands arisg from such sales or enfranchisemts as afsd: NOW THIS INDRE WITNETH that in psuance, &c., & in conson of the sum of £—— now pd to the sd A. by the sd trees out of such moys as afsd by the diron of the sd B. (the rect, &c.), the sd A. as benefi owner both hby surrender & rele unto the sd B. as tenant for life & lord of the sd manor of ——, *pcels*, p. 377: To HOLD the same UNTO & TO THE USE of the sd B. to the intent that the customary tenure of the same premes may become merged & extinguished in the freehd thof wch is now subjt to the uses of the sd will as afsd. IN WITS, &c.

PREC. XLII.

Sales and enfranchisements (b).

Agreement for purchase.

Witnesseth.

Surrender to tenant for life of manor.

XLIII.

CONVEYANCE of the EQUITABLE ESTATE (c) in an UNDIVIDED MOIETY of COPYHOLDS by a TENANT in COMMON to his Co-TENANT.

PREC. XLIII.

PARTIES, A., vendor, 1; B., pchaser, 2. Recital of will, devisg copyhds, "hinafter mentd," to trees upon trusts, death of testor, probate & seisin, pp. 359 and 365; Admittce of trees, p. 351, "upon the trusts by the sd will decl'd concerng the same;" Subseqt events, showg that A. & B. are entled to the equitable

Agreement.

with the matter except to see that the deed is in proper form (see p. 477, note), and to pay the purchase-money, seem proper parties.

(b) Short recitals may be framed as on p. 478, note.

(c) No fines are of course payable in respect of the devolution of an equitable estate in copyholds; *Hall v. Bromley*, 35 Ch. D. 642.

PREC. XLIII.

Wit-
nesseth.

Grant.
Haben-
dum.

intt eqly as tenants in common; Contract by A. for the sale to B., p. 370, of, "the undivided moiety of the sd copyhd premes, to wch he, the sd A., is entled in equity under the trusts of the sd will, & the inhance thof in posson accdg to the custom of the sd manor." NOW THIS INDRE WITNETH THAT in psuance, &c., & in conson, &c. (the rect, &c.), the sd A., as benefl owner, doth hby grt(a) unto the sd B., All that one undivided moiety, to wch the sd A. is entled in equity as afsd, of & in, pcels, p. 377: To HOLD the sd undivided moiety & premes hby grted UNTO & TO THE USE of the sd B. his hrs & assns, accdg to the custom of the sd manor, by & under the rents, &c., as in Precedent XLI. In wits, &c.

XLIV.

PREC. XLIV.

DEED of ENFRANCHISEMENT of COPYHOLDS by the Tenant for LIFE of the MANOR. VARIATIONS where the MINERALS are expressly CONVEYED or RESERVED, where the COMMONABLE RIGHTS are EXTINGUISHED, and for reservation of SPORTING Rights (b).

Recitals. *PARTIES, A., tenant for life, 1; B., tree, 2; C., Copyhder, 3. Recital of settlemt of manor settg forth uses as far as limon to A.*

As to
enfran-
chisement
by deed.

(a) If the parties were joint tenants, the conveyance would be by release.
 (b) It is the practice to enrol the deed on the court rolls. As to enfranchisement, where the manor is in settlement, the tenant for life can enfranchise under the Settled Land Act, 1882; see ss. 3 (ii.), 4 (1, 6, 7), and above, p. 460, note; the circumstance (as in this case) of there being only one trustee not creating any difficulty where (as is usual) one trustee is authorised to act generally, see *Re Garnett Orme*, 25 Ch. D. 595, above, p. 464, note. It was becoming the practice before the Act to vest the power of enfranchisement in the tenant for life, so as to enable him both to convey and give a discharge for the consideration money, for which he was accountable to the trustees; under a power in that form, the procedure would be somewhat simpler than under the Act, as the concurrence of the trustees would be unnecessary. If the enfranchisement is effected under an express power, the conveyance would be by revocation and appointment of the use, as on a sale, see Precedent XXXIV. Where the copyhold is settled it may be necessary to proceed under the Copyhold Act, 1894 (57 & 58 Vict. c. 46). Part 1 of the Act deals with compulsory enfranchisement, Part 2 with voluntary enfranchisement, and Part 3 states the effects of enfranchisement under the Act. With the consent of the Board of Agricul-

*for life, & shewg that B. is the tree within the Settled Land Acts & that a sole tree is empowered to act genlly; Admission of C. to copyhds, p. 351; AND WHAS the sd A., as tenant for life of the sd manor, under the sd recited indre of settlemt, & by virtue of the powers of the Settled Land Acts, 1882 to 1890, has agrd with the sd C. for the enfranchisemt of the sd copyhd premes in mner hinafter mentd in conson of the sum of £——, & it has been agrd that the mines & minls in or under the same shl be included in such enfranchisemt, or, “shl be reserved with the rt of workg the same & orwise,” in mner hinafter appearg, & that the commonable rts existg in respt of the sd premes, shl be preserved [extinguished] as hinafter appears [& that such other reservons shl be made as are hinafter expd]. NOW THIS INDRE WITNETH that in psuance, &c., & in conson, &c. (the rect, &c.), the sd A., as benefl owner, by virtue of the powers of the sd Act, & of every other power enablg him in that behalf, doth hby grt, *pcels*, p. 377. [Togr with the mines & minls in or under the same premes &] [Togr with all rts of common & commonable rts in, over, upon, or out of any*

PREC.
XLIV.

Agreement
for enfran-
chisement.

Wit-
nesseth.

Grant by
lord.

ture the lord of any manor may enfranchise, and the copyholder may accept an enfranchisement, but if the estate of either party is in settlement and the tenant does not pay all the costs, notice must be given to the next remainderman or reversioner of inheritance, s. 14. The consideration may be one or more of a gross sum, a rent-charge, or a conveyance of land or of a right to mines or minerals, or of a right to commit waste on lands belonging to the manor, s. 15. The enfranchisement may, with the consent of the Board, be effected by such a deed as would be proper if the lord was seised in fee, s. 16; a printed draft of such a deed can be obtained on application to the Board at their office, 3 St. James's Square, London, S.W. The provisions as to the amount, &c., of the rent-charge, if any, the manner of conveying land as the consideration for enfranchisement, and making pecuniary consideration for enfranchisement a charge on the land enfranchised, will be found in ss. 17 to 19. The effects of enfranchisement under the Act are, that the land becomes freehold, the lord retaining the same right of escheat as if the land had not been enfranchised; the land is not to descend according to the custom of the manor; it is not to be affected with the title to the manor; every mortgage on the copyhold interest becomes a mortgage on the freehold interest, but subject to any charge having priority thereof by virtue of the Act; the freehold interest into which the copyhold interest is changed is to be the reversion immediately expectant on any term existing in the copyhold at the date of the enfranchisement, s. 21. A commoner does not lose his rights of common, s. 22, and the rights of lord and tenant in respect of mines and minerals are not altered by enfranchisement. The acts of either lord or tenant done under the Act are valid though he is only a limited owner, s. 43, or trustee, s. 44.

PREO. XLIV. <hr/>	
Reserva- tion of minerals.	common or waste lands of the sd manor to wch the sd C., his hrs or assns now is, or but for these pants wd have been hence- forth entled in respt of the sd premes hby enfranchised] [<i>or as the case may be</i> , except & reservg unto the sd A. & his successors in title, lords of the sd manor, all mines, minls & quarries of coal, stone, slate, ironstone, & other ores, mines & minls whater in & under the sd lands & premes hby enfranchised or any pt thof, togr with all such powers & liberties of gettg & workg the same & orwise in relon thto as are hinafter grted] [& all
Franchises. Sporting rights.	franchises, rts & royalties & all ancient fisheries & rts of fishg : AND ALSO all such liberties of chase & free warren & killg of game (if any) as have been htofore anciently used & enjoyed by the lords of the sd manor or to wch by law, grt or custom
Haben- dum.	they are entled (a)] : To HOLD the same UNTO & TO THE USE OF the sd C., his hrs & assns, freed & for ever dischg'd of & from all rents, fines, duties, services, & other incidents of customary tenure [other than & except such as are hrin excepted &
Further witnesseth. Grant by copyholder of mineral rights.	reserved] : [AND THIS INDRE ALSO WITNETH that in conson of the premes & by virtue of the powers of the Copyhd Acts, & of every or any other power, este, or intt in any wise enablg him in this behalf, he the sd C., as benefl owner, Doth hby grt unto the sd A., & his succors in title, lords of the sd manor, full & free liberty & power, &c., <i>powers of gettg minls</i> , p. 386 ; [<i>if such be the intention, add</i> , "PROVD ALWAYS, & it is hby agrd & decl'd that all rts of common & commonable rts, &c., <i>as above</i> , shl henceforth be extinguished for the benefit of the sd A. & his succors in title under the hinbfe recited indre of settlem't]. <i>Clause restrictg liability of A. under statutory</i>
Proviso as to common- able rights.	<i>covts for title</i> , p. 411 ; <i>Acknmt & undertakg by A. as to ct</i> <i>rolls & title deeds of manor (b)</i> , p. 418 ; [<i>or, if so intd</i> , "PROVD

(a) The reservation sometimes extends to "the rendering of suit of court according to the custom;" but this is void under the Statute of Quia Emptores, see *Bradshaw v. Lawson*, 4 T. R. 443. That customary rights are extinguished by an enfranchisement, unless re-granted, see *Tilbury v. Silva*, 45 Ch. D. 98; and see the same case for a full clause of enfranchisement.

(b) It is doubtful whether the purchaser is entitled to an acknowledgment at all. As to what his rights are in this respect, see *Re Agg-Gardner*, 25 Ch. D. 600. By the Copyhold Act, 1894, s. 64, the lord of the manor is empowered, when all the lands held of the manor have been enfranchised, to hand over the court rolls to the Board of Agriculture or the Master of the Rolls, persons interested having a right of inspection, &c.

ALWAYS that the sd A. & his succors in title, lords of the manor, shl not be required to produce any of the deeds or docts of title relatg to, or the ct rolls of the sd manor to the sd C., his hrs or assns, any law or usage to the contrary notwg."]
IN WITS, &c.

PREC.
XLIV.

Proviso as
to non-
production
of court
rolls, &c.

XLV.

ASSIGNMENT of LEASEHOLDS held under SEVERAL LEASES by a TRUSTEE for CREDITORS under a LIQUIDATION by ARRANGEMENT, with the CONCURRENCE of the DEBTOR (c), to TENANTS IN COMMON; a MORTGAGE to a BUILDING SOCIETY being paid off out of the PURCHASE-MONEY. VARIATIONS where the Mortgage was made to a SOCIETY formed under the repealed BUILDING SOCIETIES ACT, and since INCORPORATED under the BUILDING SOCIETIES ACT, 1874. PREC. XLV.

PARTIES, A., tree for credors, 1; B., debtor, 2; C. & D., Recitals.
pchasers, 3. Recite leases, p. 357; Devolon of title to the debtor,
p. 359; Mtge, p. 352, & further chge, p. 354, to [the trees of]
a benefit bldg society: Receivg order agst B., & resolon for
admon of ppty of B. under a scheme of arrangemt & apptmt of A.
as tree witht a committee of inspon, p. 368: AND WHAS by order of the sd A., the premes demised by the sd respive hinble
recited leases, togr with other ppty, were, on the — day of
—, put up for sale by public auction at, &c., in sevl lots,
whof lots — comprd the sd respive leasehd premes, & at
such sale the sd C. was the highest bidder for & was decld the
pchaser of lots —, for the sum of —: AND WHAS the sd
C. bid at the sd sale on behalf of himself & the sd D., & the
sd C. & D. are desirous that the sd premes shl be assned to
them as tenants in common in mner hinafter appearg: [AND
WHAS the sd — Bldg Society was on the — day of — Sale by
auction.

(c) See the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 9, 18, and note, *ante*, p. 484. See also the Deeds of Arrangement Act, 1887 (50 & 51 Vict. c. 57), and the Land Charges, &c., Act, 1888 (51 & 52 Vict. c. 51), ss. 7—9. The debtor's concurrence is of course not necessary; compare Precedent XXVI.

PREC. XLV. incorporated under the Bldg Societies Act, 1874]; AND WHAS
 the sum of £——, being the amt due to the sd Bldg Society
 under their sd respive mtge secs has, at the reqt of the sd A. &
 B., been pd by the sd C. & D. to [the trees of] the sd Society,
 & the sd mtge secs have been vacated by a statutory rect for
 the sd sum of £——, dated, &c., endorsed on the sd indre of
 mtge of, &c., & signed by the sd trees, *or*, “under the seal
 of the sd Bldg Society, countersigned by the secretary
 [manager]” (a); *Agreemt of B. to concur*, p. 485; NOW THIS
 INDRE WITNETH THAT for carryg the sd sale into effect, &
 in psuance of the sd respive agrmts, & in conson of the sum
 of £—— pd by the sd C. & D. in mner follg, namely, £——
 pt thof to the [sd trees of the] sd —— Bldg Society in mner
 afsd, & the sum of £—— the residue thof to the sd A. (the
 paymt & rect in mner afsd of wch respive sums of £—— &
 £——, makg togr the sd pchase-moy of £——, the sd A. & B.
 do resply hby acknowe), the sd A. as tree, doth hby assn, & the
 sd B., as benefl owner, at the reqt of the sd A. doth hby assn &
 confirm unto the sd C. & D., *pcels by referce to leases*, p. 381:
 To HOLD, &c., “as tenants in common in eql shares,” &c., see
 p. 396; *Corts by C. & D., jtly & sevly with A., if he is under
 any liability, & also as separate corts with B., for indemnity agst
 rent & corts of leases*, p. 420, *form II. (b)*. IN WITS, &c.

**Reconvey-
 ance of
 mortgage
 to building
 society.**

(a) See 6 & 7 Wm. IV. c. 32, s. 5, and the Building Societies Acts, 37 & 38 Vict. c. 42, s. 42; 38 & 39 Vict. c. 9; 40 & 41 Vict. c. 63; 47 & 48 Vict. c. 41; 57 & 58 Vict. c. 47. Owing to the doubts which have arisen as to the effect of the statutory receipt on redemption (see *infra*, MORTGAGES), an express reconveyance is sometimes taken to ensure getting the legal estate. As to the vesting of property held in trust for a society incorporated under 37 & 38 Vict. c. 42, see that Act, s. 27, and 40 & 41 Vict. c. 63, s. 4. A building society may not advance money on a second mortgage unless the first mortgage is in its favour (57 & 58 Vict. c. 47, s. 13).

(b) As to this covenant, see 1 Dart, V. & P. 629; above, p. 419, note.

XLVI.

ASSIGNMENT *by HUSBAND and WIFE and a MORTGAGEE of RENEWABLE LEASEHOLDS to which the HUSBAND is entitled in RIGHT of his WIFE (c), under a will, the EXECUTOR concurring to ASSENT to the bequest.*

PREC.
XLVI.
—

PARTIES, A., husbd, “ & B., his wife,” 1 ; C., mtgee, 2 ; D., exor, 3 ; E., pchaser, 4. Recite lease to X. : Will of X. bequeathg leasehds to B. bfe her marre : Death & probate, p. 365 : AND WHAS it has been the custom that the sd lease shd be renewed at the expiron of every — yr on paymt to the lessor of a fine & usual fees : AND WHAS the sd A. intermarried with the sd B. on the — day of — : Recite mtge by A. & B. to C., p. 352 : AND WHAS the sd A., with the approbon of the sd B., has contracted with the sd E. for the absolute sale to him of the sd leasehd premes for the residue of the sd term, & all other the este & intt of the sd A. & B., or eir of them thrin for the sum of £— ; State of mtge debt & agrmt of C. to concur, p. 373 ; Agrmt of D. to concur, p. 373, form XXI. : NOW THIS INDRE WITNETH that in psuance, &c., & in conson, &c. (the rect, &c.), (£— being pd to C. by the diron of A. & B. “ with the privity of the sd D.,” & £— being pd to A. “ with the like privity,”) the sd C. as mtgee at the reqt of the sd A. & B. doth hby assn, & the sd D. as psonal repve of the sd X. deced at the like reqt doth hby assn & confirm, & each of them the sd A. & B., as benefl owner doth hby assn & confirm unto the sd E., p. 381, with the benefit of all such rt or claim to the renewal of the sd lease as may be subsistg : Habendum to E., p. 396, form XIV., free from mtge, form VIII., p. 395. Cort by E. with A., & separately with D., to pay rent, &c., & indemnify “ the sd A. & B., & each of them, their & each of their hrs, exs, & ads, & also the sd D., his hrs, exs, & ads, &

Recitals.

Custom
to renew
lease.

Contract.

Wit-
nesseth.

(c) The concurrence of the wife is usual under the old law in an assignment of her leaseholds, though it is not absolutely necessary except where her interest is equitable only, in which case she must concur to release her equity to a settlement and acknowledge the deed ; 1 Dart, V. & P. 10. In cases to which the Married Women's Property Act, 1882, applies, she can convey as a *feme sole*, and her husband's concurrence is not necessary (see p. 490, note). In either case she can covenant under the Act.

Concur-
rence of
wife in
assignment
of her
leaseholds.

PREC.
XLVI.
—

the este & effects of the sd X. deced," p. 419. [*Acknmt & undertakg by A. as to deeds*, p. 418 (a).] IN WITS, &c.

XLVII.

PREC.
XLVII.
—

ASSIGNMENT of PART of the Property comprised in a
LEASE at an APPORTIONED RENT. *Mutual COVENANTS
and Cross POWERS of DISTRESS and ENTRY, to secure
PAYMENT of the apportioned parts of the RENT (b).*

Recitals.

Agree-
ment.

Wit-
nesseth.

PARTIES, A., vendor, 1; B., purchaser, 2. Recite lease, p. 357, of "the hds hby assnd, togr with other hds;" Agrmt for sale, p. 370, of, "the — & hds hby assned, being pt of the premes demised by the sd indre of lease, subjt to the yrly rent of £—, pt of the sd yrly rent of £—, & to the covts by the lessee & condons contd in the sd indre of lease, & henceforth to be pformed & observed in respt of the same premes:" And it has been agrd that the rent of £—, being the residue of the sd rent of £—, shl henceforth be pd by the sd A., in respt of the demised premes retained by him, & that these pants shl contain the covts, powers, & provons hinafter expd: NOW THIS INDRE, &c., conson (the rect, &c.), assnmt by A. "as benefl owner" to B., pcels set out fully, followg as nearly as may be the description in the lease, "being pt of the hds & premes comprd in & demised by the hinfte recited indre of lease";

(a) See pp. 415, 488, note (d); p. 492, note.

As to cross
powers of
distress
and entry,
&c.

(b) As to the apportionment of rent, see p. 52, note. It is probable that a power of distress, given by way of indemnity in this and other similar cases, is affected by the Bills of Sale Acts; see *Pulbrook v. Ashby*, 56 L. J. N. S. Q. B. D. 376; 35 W. R. 779; *Stevens v. Marston*, 39 W. R. 129, and it is also a question whether the powers of distress and entry, if unrestricted as to time, may not be obnoxious to the rule against perpetuities, although the property is leasehold; see *Re Daveron*, [1893] 3 Ch. 421, and the remarks above, p. 305, note, as to this question, with reference to perpetual rents. It might be an advantage to supplement the indemnity given by each party by charging it on his holding.

It has been held in *Johnson v. Wild*, 44 Ch. D. 146, that an assign of part of the land in lease, who pays the whole rent, has no right to contribution from an under-lessee of another part, the original lessee having covenanted in both cases to pay the rent and to indemnify, but having subsequently become bankrupt.

Habendum UNTO the sd B., his exs, ads, & assns, henceforth for the residue now unexpired of the sd term of — yrs, subj to the paymt as from the — day of —, of such proportion as is hinafter mentd of the sd rent of £— reserved by the sd indre of lease, & to the covts by the lessee (other than for paymt of the sd entire rent), & condons thrin contd & henceforth to be pformed & observed in respt of the sd premes hby assned, PROVD ALWAYS & it is hby agrd & decl'd that the sd rent of £— shl as from the sd — day of — be & the same is hby apportioned as follows, namely, the yrly rent of £—, pt thof shl be chgd exclusively upon & payable out of the sd premes hby assned in exoneron of the residue of the sd premes comprd in the sd lease & the yrly sum of £—, the balce of the sd rent of £— shl be chgd upon & payable out of the residue of the sd premes in exoneron of the premes hby assned, *Covt by A. for paymt of his apportioned pt of rent & pformce of covts in the lease affectg ppty retained, & for the indemnity of B.*, “& the premes hby assned,” p. 419: PROVD ALWAYS, & it is hby agrd & decl'd, that if & whenever the sd B., his exs, ads, or assns, or his or their tenant or tenants shl be called upon to pay & shl pay the sd apportioned yrly rent of £— hinfte covted to be pd by the sd A. in respt of the

PREC.
XLVII.

Haben-
dam.

Appor-
tionment
of rent.

Powers of
distress
and
entry (c).

(c) The cross covenants and powers, &c., might be combined as follows :—

“And each of them the sd A. & B. doth hby for himself, & his assns covt with & grt to the other of them his exs, ads, & assns as follows (namely) that he the covtg pty his exs, ads, or assns will henceforth pay the apportioned pt of the sd yrly rent wch ought to be pd by him or them as hinfte provd & pform & observe the covts by the lessee (other than for paymt of the sd entire rent of £—) & condons contd in the sd lease so far as the same relate to his or their portion of the sd premes thby demised, And will at all times keep the other of them the sd A. & B., his exs, ads, & assns, indemnified agst all actions, pcdgs, claims & demands occasd by the non-paymt of such apportioned pt of the sd rent or the breach of any of such covts or condons, AND FURTHER that if & whenever the other of them the sd A. & B., his exs, ads, or assns, or his or their tenant or tenants, shl be called upon to pay & shl pay such apportioned rent as last afsd or any pt thof or shl incur, &c., &c., *similar alterons being made throughout.*”

Variation
where cross
covenants
and
powers,
&c., are
combined.

PRINC.
XLVII.
—

Monies
payable
under
indemnity
to be a
charge (b).

premes retained by him as afsd, or any pt thof, or shl incur any costs, damages, or expses by reason of the non-paymt thof, or of any breach by the sd A., his exs, ads, or assns, of the covts or condons contd in the sd indre of lease & affectg the premes retained by him the sd A., then it shl be lawful for the sd B., his exs, ads, or assns, into the sd last-mentd premes or any pt thof, [to enter & distrain as landlords may do for rent reserved upon leases, & also (by way of addonal remedy)] to enter upon & remain in the posson or rect of the rents & profits of the same premes until by the means afsd or orwise the sd yrly rent of £—— so in arrear, & all costs, chges, & expses occasd to the sd B., his exs, ads, or assns, by the non-paymt thof, or by the breach or non-pformce by the sd A., his exs, ads, or assns, of any such covts or condons as afsd (as the case may be) shl have been fully pd & satisfied. *Cort by B. for paymt of apportioned rent & pformce of cort in lease affectg "the sd premes hby assned" & for the indemnity of A., " & the premes retained by him as afsd," p. 419 ; & grt by B. to A. of powers of [distress &] entry, similar, mutatis mutandis, to the covts & powers entd into & given by A. (a),* And it is hby agrd & decl'd that all moys wch may become payable to eir of them the sd A. & B., his exs, ads, or assns, under the respive covts of indemnity hinfte contd shl be a chge upon the portion of the premes comprd in the sd lease belonging to the other of them, his exs, ads, or assns, & be recoverable accdly by sale or such other means as may be available in that behalf under the Conveg & Law of Ppty Act, 1881, or orwise. [*Acknmt & undertakg as to the lease & munimts, to be entd into by A. if they are retained by him, or orwise by B., p. 418.*] IN WITS, &c.

(a) If the lease be for more than 21 years unexpired, the following may be added to avoid the doubt as to perpetuity:—

Restriction
of powers
of distress,
&c., as to
time.

"Provd always & it is hby agrd & decl'd that the respive powers of distress & entry hinfte given to the sd A. & B. resply & their respive exs, ads, & assns shl be restricted to the lives & life of H. M. the Queen & her issue now livg & the survors & survivor of them & 21 yrs after the dece of such survivor, & such further period for wch the same may lfully be so given."

(b) This, unless merely incidental to the main purpose of the deed, might make it liable to a mortgage stamp; but the point is of small moment.

XLVIII.

ASSIGNMENT of PART of the PROPERTY in a LEASE which
has already been ASSIGNED at an APPORTIONED RENT.

PREC.
XLVIII.
—

PARTIES, A., vendor, 1; B., purchaser, 2. Recite lease, p. 357; *Recitals.*
Assignmt to K. of pt of the leasehds at an apportioned rent,
p. 359, *form xxxix.*; *Devolon of title*, p. 359, to “the hds hby
assned” to A. “for the residue of the sd term of — yrs,
subjt to the apportioned rent of £—— chged thron by the sd
indre of, &c., & to the covts & condons contd in the sd lease
so far as the same relate to the same hds, & with the benefit of
& subjt to the covts & provons contd in the sd indre of assnmt
of, &c., as to the apportionmt of the sd entire rent of £——,
& orwise;” *Agreemt for sale*, p. 370, “for the residue of the
sd term, subjt to the sd apportioned rent of £——, & with the
benefit of & subjt to the covts & provons contd in the sd indre
of assnmt: NOW THIS INDRE WITNETH, that in psuance, *Wit-*
&c., *conson* (the rect, &c.), the sd A., as benefl owner, doth hby *nesseth.*
assn unto the sd B., *pcels*, p. 381: *Habendum*, p. 396, *form xiv.*,
with variation in note; *Covt by B. with A.* to “pay the appor-
tioned rent of £——, & pform & observe the covts & agrmts
on the pt of the sd K., & condons reserved by & contd in the
sd indre of assnmt, & will at all times keep the sd A., &c.,”
p. 419, *form i.* [*Acknmt & undertakg as to munimts*, p. 418.]
IN WITS, &c.

XLIX.

ASSIGNMENT of LEASEHOLDS sold in LOTS to purchaser
of LARGEST LOT on TRUST to grant UNDERLEASES to
other purchasers.

PREC.
XLIX.
—

PARTIES, A., vendor, 1; B., purchaser, 2. Recite lease, p. 357; *Recitals.*
[*Devolon of title to A.*, p. 359]: AND WHAS the sd A. has *Sale in*
recently sold the premes comprd in the sd lease to the sevl *lots.*
psons in the respive lots for the respive sums, & subjt to the
apportioned rents specified in the schdle hto; & it was agrd
on the sd sales that the sd A. shd assn all the premes comprd

PREC.
XLIX.
—

Wit-
nesseth.

Haben-
dum.

Upon trust
to grant
underlease.

Declara-
tion of
trust.

in the sd lease to the sd B., & that he shd exte to each other pchaser such underlease of his lot as hinafter mentd: NOW THIS INDRE, &c., *conson* (the rect, &c.), the sd A., as benef owner, doth hby assn unto the sd B., *pcels by referce to lease*, p. 381, To hold the same, *subjt to entire rent & covts, &c., of the lease*, p. 396, *form xiv.*, as to the premes comprd in lot 1, as desc'd in the schdle hto, for the absolute use & benefit of the sd B., his exs, ads, & assns, And as to each of the other lots desc'd in the sd schdle hto, UPON TRUST at any time at the reqt of the sd A., his exs, ads, or assns, to exte a pper underlease thof, unto & at the cost of the pchaser thof, to commce from the — day of —, & to be for the residue of the sd term of — yrs, except the last day of such term, at the yrly rent mentd in the schdle hto as apportioned on such lot, such rent to commce & be computed from the sd — day of —, & such underlease shl contain the covts & provons follg, that is to say, *give epitome of covts, &c., see next Precedent*, or, "such underlease shl be in the form contd in the 2nd schdle hto," with such modifcons as the circes of each case may require: AND IT IS HBY AGRD & decl'd that until each such underlease shl be grted, the sd B., his exs, ads, & assns, shl stand possed of the lot to be comprd thrin, upon trust for the sd A., his exs, ads, & assns, subjt in equity to the paymt, pformce, & observe by the sd A., his exs, ads, & assns, of the rent & covts by the lessee, & condons to be reserved by & contd in such underlease as hinfte provd, & subjt to the agrmt for the sale thof hinfte mentd; *Covts by B. with A. to pay rent & pform covts in lease*, p. 419. IN WITS, &c.

[*Schdle in columns, containg a short description of each lot, pchasers' names, the rents apportioned on, & pchase-moy for, each lot.*]

[*2nd Schdle containg form of underlease.*]

L.

UNDERLEASE to a PURCHASER of PART of LEASEHOLDS PREC. L.
—
*held under one lease, and sold in LOTS. The LEASE
 having been ASSIGNED to another PURCHASER at the
 same sale. To accompany LAST PRECEDENT.*

PARTIES, A., vendor, 1; B., purchaser of one lot, assignee of
 lease, 2; C., purchaser of another lot, 3. Recite lease, p. 357, of Recitals.
 "the hds hereby demised together with other hds;" Devolution of Agree-
ment.
 title, if any, to A., p. 359; AND WHEREAS the sd A. has agreed with
 the sd C. for the sale to him for the sum of £—— of the hds
 hereby demised, which form part of the premises comprised in the sd
 lease, at the apportioned rent of £——: AND WHEREAS upon the
 treaty for the sd sale it was agreed that the sd A. should assign the
 whole of the premises comprised in the sd lease to the sd B., for
 all the residue of the sd term of —— yrs thereby granted, & subject
 to the sd rent thereby reserved, & to the covenants & conditions therein
 contained, & that the sale of the portion of the premises agreed to
 be sold to the sd C., as aforesaid, should be effectuated by the sd B.
 executing an underlease thereof to the sd C., at the sd apportioned
 rent of £—— for the term, & subject to such covenants & provisions &
 otherwise as hereinafter expressed: AND WHEREAS in pursuance of the sd
 arrangement, the sd premises comprised in the sd lease have been
 assigned by the sd A. to the sd B., by an indenture dated, &c., & Assign-
ment.
 made, &c., but upon trust to grant such underlease to the sd C.,
 as hereinbefore mentioned: NOW THIS INDENTURE WITNEETH that in Wit-
nesseth.
 pursuance, &c., conson, purchase-moy paid to A. by C. (the receipt, &c.),
 the sd B. by the direction of the sd A., doth hereby demise, & the Demise.
 sd A. doth hereby confirm unto the sd C., parcels, p. 377, "being
 part of the premises comprised in the sd lease" (a), To HOLD the Haben-
dum.
 same unto the sd C., his executors, administrators, & assigns henceforth for all
 the residue now unexpired of the sd term of —— yrs granted by
 the sd lease, except the last day thereof; Reservation to B. of
 rent apportioned on C.'s lot; Covenants by C. with B. to pay such
 apportioned rent, & to perform covenants in head lease (other than

(a) The clause in the Conv. Act, 1881, s. 63, making a conveyance pass "all the estate" of the grantor is of course excluded in the case of a lease by the expression of a contrary intention, notwithstanding the definition of "conveyance" in s. 2.

PREC. L. *the covt for paymt of rent) so far as the same affect the ppty demised to C. & to indemnify B. agst breaches of such covts, & not to forfeit the head lease; And proviso for re-entry on non-paymt by C. of his apportioned rent, or breach of any covt by him, see LEASES; Covts by B. with C. that B. "will during the sd term pay the rent reserved by the sd lease on the first day on wch the same shl be payable, & will pform & observe all the covts & agrmts on the pt of the sd, origl lessee, & condons contd in the sd lease so far as the same affect the premes comprd in the sd lease other than the sd premes hby demised;" Not to do anything to forfeit the head lease; Cort by B. with C. for quiet enjoymt (a), see LEASES. [Acknmt & undertakg by B. as to prodon, &c., of lease, p. 418.]*
IN WITS, &c.

LI.

PREC. LI. *UNDERLEASE for effectuating the sale to a LIMITED COMPANY of MINING PROPERTY (b) held under a LEASE containing a COVENANT against ASSIGNING or UNDER-LETTING without the LESSOR'S LICENCE, which is refused as to an assignment. The PURCHASE-MONEY being payable by INSTALMENTS. ASSIGNMENT of FIXED MACHINERY, &c., belonging to the VENDOR.*

Recitals. *PARTIES, A., vendor, 1; The — Co, Limd (hinafter called the Co), 2. Recite lease of mining ppty, p. 358, containing a power to the lessee to determine it on notice, & a cort agst assng or underlettg witht licence: AND WHAS the sd A. has agrd with the Co for the sale to them of the sd premes*

Agreement for sale.

Covenants for title. *(a) As this is a "demise at a rent," covenants for title, &c., cannot be implied by making A. and B. demise, &c., as "trustee" or "beneficial owner," see the Conv. Act, 1881, s. 7 (5); but as the purchaser, although only a lessee, would have the benefit of the vendor's covenants contained in the assignment to B. (see the Act, s. 7 (6)), no further covenants on the part of A. are required, and the ordinary lessor's covenant by B. for quiet enjoyment will suffice.*

(b) As to the notice necessary on change of ownership of a mine, see the Coal Mines Regulation Act, 1887 (50 & 51 Vict. c. 58), ss. 36 (iv) and 75.

comprd in the sd indre of lease, & the fixed machy thron for the sum of £—— & of the movable machy & plant & mining stk thron wch are transferable by delivery for the sum of £—— : AND WHAS it has been agrd that the sd sum of £——, *the pchase-moy of the lease & fixtures*, shl be payable as follows (that is to say), £—— upon the exon of these psnts, & the residue thof by four annl instalmts of £—— each on the —— day of ——, &c., with intt on the ppal sum for the time being remaing unpd at the rate of —— p.c. p.a., to commce from the date of these psnts, & to be payable annlly with the sd instalmts of ppal: AND WHAS it has been agrd that the paymt of such four instalmts of pchase-moy & intt shl be secd by a lien or chge upon the sd leasehd premes, & by the covt of the Co as hinafter expd (c) [*or, if so intd*, shl be secd by the covt of the Co, but that the sd A. shl not retain any lien or chge upon the sd leasehd or other premes for the same]: AND WHAS the landlords of the premes demised by the sd hinbfe recited indre of lease have refused to consent to an assnmt thof but have given their consent in writg to the underlease of the same premes hby made, & it has been agrd that the sale thof to the Co shl be effectuated by the grt of such underlease & orwise in mner hinafter expd: AND WHAS the sd movable machy & plant & mining stk are intd to be delivered by the sd A. to the Co on paymt by them to him of the sd sum of £—— for the pchase thof (d): NOW THIS INDRE WITNETH that in psuance of the sd agrmt, & in conson of the sum of £——, pt of the sd pchase-moy of £——, *the price of the leasehds & fixtures*, now pd by the Co to the sd A. (the

PREC. LI.

The purchase-money to be paid by instalments.

Security for payment of instalments.

Refusal by landlords to consent to assignment.

Movable machinery to be delivered.

Witnesseth.

(c) The unpaid purchase-money would usually be secured by a mortgage.

(d) The purchase-money should be apportioned and the movable plant, &c., excluded from the assignment, to save stamp duty. The mere recital of the sale and payment of the purchase-money of the movable plant would operate as a transfer on sale so as to render the deed liable to duty under the head "Conveyance" in the Stamp Act, 1891 (54 & 55 Vict. c. 39), were it not for the exception under the head "Agreement" of "agreement, &c., for the sale of any goods;" *Horsfall v. Hey*, 2 Ex. 778. Although such a recital would not in this case make the deed chargeable, it is better to recite the delivery of the movable plant, &c., and the payment of the purchase-money for the same as *intended* to be done, so as to avoid any question as to apportioning the purchase-money for the purpose of conveyance and stamp duty, see p. 336, note.

As to apportionment for stamp duty.

PRIMO. LL.	rect, &c.), & of the covt by the Co hinafter contd for paymt of the residue of the sd last-mentd pchase-moy, & intt for the same, the sd A. doth hby demise unto the Co ALL & singr the lands, messes, bldgs, mines, minls, liberties, licences, powers, rts, & premes comprd in, or grted or demised by the sd hinbfe recited indre of lease, To HOLD the same UNTO the Co & their assns for the residue now to come of the sd term of — yrs, except the last day thof, determinable nevless as hinafter mentd, SUBJT to the exceptions & reservons contd in the sd lease, & SUBJT also to & chged with the paymt to the sd A., his exs, ads & assns, of the sd four unpd instalmts of the sd pchase-moy of £——, amtg to £—— each & intt psuant to the covt of the Co hinafter contd [<i>or, if so intd</i> , free & dischged from any lien or chge in favour of the sd A., for the sd four unpd instalmts of the sd pchase-moy, or the intt for the same], YIELDG & PAYING therefor unto the sd A., his exs, ads & assns, durg the sd term hby grted, the same or the like rents & royalties as were by the hinbfe recited indre of lease reserved or made payable in respt of the sd premes, & to be pd or rendered upon or at the same or the like days or times & in the mner thby provd: AND SUBJT to the observce & pformce by the Co & their assns of the covts on the pt of the lessees & provons in the sd lease contd (other than the respive covts for paymt of the sd rents & royalties, & restrictive of the rt of the lessees to assn, underlet, or pt with the sd premes): AND THE SD A. doth hby, so far as he is authorised to do so witht the lessor's consent, declare that he, his exs, ads, & assns, will stand possed of the sd last day of the sd term of — yrs grted by the sd lease IN TRUST for the Co & their assns: AND THE Co do hby for themselves & their assns covt with the sd A., his exs, ads, & assns, that they, the Co & their assns will, durg the sd term hby grted, pay or render to the sd A., his exs, ads, & assns, the sevl rents & royalties hinbfe reserved on or at the respive days or times, & in the mner, on at or in wch the same are or ought to be pd or rendered as afsd clear of all dedons: AND ALSO WILL, durg the sd term hby grted, pform & observe all the covts & agrmts by the lessee & provons contd in the sd lease (except as hinbfe mentd): AND WILL at all times keep indemnified the sd A., his hrs, exs, ads, & assns agst all actions,
Demise.	
Parcels.	
Habendum.	
Redden- dum.	
Declaration of trust by vendor.	
Covenants by com- pany.	
To pay rent.	
Perform covenants.	
Indemnify vendor.	

pcdgs, costs, damages, claims, demands, & liability for or in respt of any breach of any of the sd covts, agrmts, & provons (except as afsd): AND THE SD A. DOTR hby covt with the Co & their assns, that he, the sd A., his exs, ads, or assns, will, durg the sd term hby grted, duly pay or render the respive rents & royalties reserved by, or payable under the sd lease: AND ALSO that he, the sd A., his exs or ads will, at any time, if reqtd so to do by the Co or their assns, use his or their best endeavours at the expse of the Co or their assns to procure the license of the landlords to an assnmt to or in trust for the Co or their assns of the premes hby demised: AND IN THE EVENT of such license being obtained, will exte such assnmnts or instrumts as may be required by & at the expse of the Co or their assns for assng or assurg the sd premes to or in trust for the Co or their assns: AND ALSO WILL at any time, if reqtd so to do by the Co or their assns, & at their expse, for the ppose of determing the sd lease, give such notice to the landlords thof as is in that behalf provd by the sd lease, but except upon such reqt of the Co or their assns, will not give any such notice whby the sd lease may be determined: AND ALSO WILL not at any time except by givg such notice upon reqt to determine the same as afsd, do or knowingly suffer any act or thing whby the sd lease may be invalidated or become void or liable to forfeiture: *Covts by A. for title*, p. 402, *substitutg* "demise" for "assn" & *omittg the pts relatg only to freehds* (a): AND THIS INDRE ALSO WITNETH that in further psuance of the sd agrmt & for the consons afsd, the sd A. as benefl owner, doth hby assn unto the Co ALL such (if any) of the bldgs, erections, furnaces, forges, foundries, rails, trams, turntables, weighing machines, waggons, steam & other engines, gins, machy, & fixtures, in, upon, or affixed to the sd premes comprd in the

PREC. LI.

Covenants
by vendorTo pay
rent.Endeavour
to procure
license to
assign.

To assign.

Give notice
on request
to deter-
mine.Not to
invalidate
lease.Further
witnesseth.Assign-
ment.
Fixed
machinery.

(a) This being a demise at a rent, is not within the Conv. Act, 1881, s. 7, see sub-sec. 5, and p. 401, note, p. 530, note; so that express covenants for title must be inserted; or the statutory covenants might be expressly incorporated by making A. demise "as benefl owner, to the intent that the same covts by the sd A. for the title to & further assurge of the premes hby demised, may be implied as if a demise at a rent were not excepted out of section 7 of the Conveg & Law of Ppty Act, 1881."

Covenants
for title in
lease.

PREC. LI. sd lease, as are the absolute ppty of the sd A., but are incapable of being transferred to the Co by delivery, To hold the same Unto the Co & their assns absolutely: AND THE Co do hby covt with the sd A., his exs, ads, & assns, that the Co or their assns will pay to the sd A., his exs, ads, or assns, the sum of £——, being the balce remaing unpd of the sd pchase-moy, with intt thron at the rate of £—— p.c. p.a., to be computed from the date of these psnts, in mner follg (that is to say), the sum of £——, pt of the sd ppal sum, on the —— day of —— next, &c., & the intt on the ppal sum for the time being remaing unpd to be pd with each of such instalmts of ppal [*Acknmt by the Co to A. as to prodon of lease*, p. 418].
Haben- IN WITS, &c.
dum.
Covenant
by com-
pany to
pay unpaid
purchase-
money.

LII.

PREC. LII. ASSIGNMENT of an AGREEMENT for BUILDING LEASES.

Recitals. PARTIES, A., vendor, 1; B., purchaser, 2. Recite agrmt by K. to grt a lease or leases to A. "of certn pces of land thrin descd, situate at, &c., for the term of —— yrs from the —— day of —— at the yrly rent or rents thrin mentd, & subjt to the covts by the sd A., & stipulons thrin contd for the erection of bldgs & executg works on the sd pces of land & orwise as thrin mentd:" AND WHAS the sd A. has commenced the erection of bldgs & other works on the sd lands, psuant to the sd agrmt. AND WHAS the sd A. has agrd with the sd B. for the absolute sale to him for the sum of £—— of the benefit of the sd agrmt, togr with the materials & plant hby assnd (a): NOW THIS INDRE
Building WITNETH that in psuance, &c., *conson* (the rect, &c.), the
agreement. sd A., as benefl owner, doth hby assn & transfer unto the sd B. ALL THAT the hinbfe recited agrmt of, &c., & all benefit thof; AND also all materials & plant belonging to the sd A., &c., & now being on the land comprd in the sd agrmt & used or intd to be used for the pposes of the bldgs & works
Commence-
ment of
buildings.
Agreement
for sale.
Wit-
nesseth.
Assign-
ment of
agreement.
Plant, &c.

(a) If the license of the freeholder is required to the assignment the variations in the recitals will be similar to those in the assignment of a lease, p. 436, note.

thrin mentd, To HOLD the same UNTO the sd B., his exs, ads, & assns absolutely: *Apptmt by A. of B.*, "his exs, ads, & assns," *the atty & attornies of A.*, p. 179, "to give any notices under the sd agrmt," *to give rects*, p. 180, *form v., for moys*, "wch shl become payable to the sd A., under the sd agrmt"; AND ALSO to exte & do all such deeds, instrumts, & acts as shl be or appear necy or pper to enable the sd B., his exs, ads, & assns, to carry out & obtain the full benefit of the sd agrmt, & of the lease or leases to be grted psuant thto as effectually as the sd A., his exs or ads, could have done, & genly to act in the premes as to him or them shl seem pper: *Covt. by B. with A.*, that he, the sd B., his exs, ads, & assns, will pform & observe the agrmts on the pt of the sd A. contd in the sd agrmt of, &c., *continue covts for indemnity of A.*, p. 419, *mutatis mutandis*. IN WITS, &c. (b).

PREC. LII.

Power of attorney.

Covenant by purchaser to indemnify vendor.

LIII.

CONVEYANCE of FREEHOLDS to PARTNERS on a SALE by AUCTION by order of the CHANCERY DIVISION in an administration action (c). VARIATIONS for a sale by PRIVATE CONTRACT, and where the LEGAL ESTATE is outstanding in an INFANT. APPORTIONMENT of RENT where the property is subject with other land to a lease at an entire rent. APPORTIONMENT also of TITHE RENT CHARGE.

PREC. LIII.

PARTIES, A., pson havg legal este [or appted to convey], 1; B. & C., pchasers, "carryg on business in co-ptnp togr as —, under the firm of —, at —," 2. *Recite death & intestacy of X., seised of "the — & hds hby grted," leavg A. [N., the infant], his hr-at-law, & grt of admon, or, recite the will of X. devisg*

Recitals.

(b) Notice of this assignment to be given to K.

(c) See R. S. C. 1883, Order 51, rules 1, 1A *et seq.* As to what is "a cause or matter relating to real estate" within the meaning of rule 1, see *Re Staines*, 33 Ch. D. 172. See on the subject of sales by the Court generally, Dart, V. & P., chapters 19 & 20; Daniell's Chancery Practice, 1071—1110; The Annual Practice, 1896, 935.

PREC. LIII.	<i>the hds to A. [N.] in fee simple, & death of X. & probate</i> , p. 359:
Action.	AND WHAS on the — day of — an action was instituted in the Chancery Divon of the High Ct of Justice, of wch the short title & referce to the record is <i>re X.</i> , decd, 18—, X., No. , & in wch K. was plt, & L., M., & the sd A. [N.] were defts, for the ppose of havg the este of the sd X. administered under the diron of the sd Ct: AND WHAS by an order made by, <i>judge</i> , on the further conson of the sd action, it was amongst other things ordered that the real este of the sd intestate [testor] shd be sold, & that the pchase-moy shd be pd into Ct to the credit of the sd action, the acct of —: [AND WHAS, in psuance of the sd order, <i>recite sale by auction to B. & C.</i> , p. 370, & the sd B. & C. thrupon pd the sum of £— as a deposit, & in pt paymt of the pchase-moy to L., the pson appted by the sd judge to rece the same: AND WHAS the result of the sd sale was duly certified on the — day of —]; [<i>or</i> , AND WHAS, in psuance of the sd order, by an agrmt in writg, dated the — day of —, & made betn L., the pson havg the conduct of the sale of the sd real este of the one pt, & the sd B. & C. of the other pt, the sd L. agrd, subjt to the approval of the sd judge, for the sale of the hds hby grtd to the sd B. & C., subjt as hinafter mentd, for the sum of £—, whof the sum of £— was pd by the sd B. & C. to the sd L. as a deposit upon the exon of the sd agrmt: AND WHAS by an order made in the sd action on the — day of — by the sd judge, the sd condonal contract of the — day of — was confirmed & ordered to be carried into effect:] AND WHAS the sd L. pd the sum of £—, <i>the deposit</i> , on the — day of —, into Ct, to the credit of the sd action, the acct afsd: AND WHAS it was stipulated upon the sd sale that the rent payable by the tenant of the sd premes under the lease hinafter mentd (wch comprises other hds), shd be apportioned in mner hinafter expd, & that the sd premes shd be subjt to such apportioned tithe rent chge as is hinafter mentd: AND WHAS by a diron ^{direc} signed by the chief clerk & made in the sd action (a) on the — day of — it was directed that the sd B. & C. shd on or bfe the — day
Order for sale.	
Sale by auction.	
Result of sale certified.	
Sale by private contract.	
Confirmation by Court.	
Payment into Court.	
Agreement for apportionment of rent.	
Direction for payment of balance into Court.	
Variation where legal estate is in infant.	(a) See R. S. C. 1883, Order 51, rule 3A, and Supreme Court Funds Rules, 1886, rule 5. Where the legal estate is in N., the infant, add “& in the mre of the Tree Act, 1893.”

PREC. LIII.

of — pay into Ct to the credit of the sd action, the acct, &c., the sum of £—, being the balce of the pchase-moy for the sd premes after deductg the sd sum of £— pd as a deposit [togr with £— for intt thron at the rate of — p.c. p.a. from the — day of — to the — day of —, makg togr £—], & ~~it was thby further ordered that on such paymt~~ being made, all pper pties shd join in & exte a pper convce of the sd premes to the sd B. & C., or as they shd direct (b): AND WHAS in psuance of the last recited order the sd B. & C., on the — day of —, pd the sd sum of £— into Ct to the credit of the sd action, the acct afsd: AND WHAS the sd B. & C. are desirous that the sd hds shd be conveyed to them in mner hinafter appearg: (c) NOW THIS INDRE WITNETH that in obedice to the sd order, & for effectuatg the sd sale, & in conson of the sum of £—, *the whole pchase-moy & intt, if any*, so pd by the sd B. & C. as afsd, & of the premes, the sd A. under the hinfce recited order of, &c. (d) doth hby grt unto the sd B. & C., *pcels, p. 377: Habendum subjt to lease, with apportionmt of rent & of tithe rent-chge, p. 394, to B. & C. as ptnp ppty, p. 398. [Acknmt & undertakg as to munimts, p. 418.]* IN WITS, &c.

Payment
into Court.

(b) In the case mentioned in the preceding note, say, "Such convce to be settled by the judge, & the judge being of opinion that the sd N. was seised of or entled to the sd hds & premes upon trust within the meang of the sd acts or one of them, & it appearg that the sd N. was an infant, the sd judge appted the sd A. to convey the sd premes to the sd B. & C., or as they shd direct for the este thrin of the sd N."

As to the case where the legal estate is in a tenant in tail, see 2 Dav. Prec., pt. 2, p. 490, note. The provision in the Trustee Act, 1894, s. 33, as to appointing a person to convey, is not confined to persons under disability, and see *Beckett v. Sutton*, 19 Ch. D. 646, a decision on section (1) of the Trustee Extension Act, 1852.

(c) In the case mentioned in note (a), add *approval of conveyance by judge*, p. 369.

Variation
where legal
estate is
in infant.

(d) See p. 399, note. In sales by trustees under the Court the persons beneficially interested cannot be required to enter into covenants for title. See *Cottrell v. Cottrell*, 2 Eq. 330.

LIV.

PREC. LIV.

CONVEYANCE of a PLOT of BUILDING LAND with EASEMENTS to two PERSONS as JOINT TENANTS. RESTRICTIVE COVENANTS by the purchasers as to BUILDING and USER of the land. VARIATIONS where there are MUTUAL COVENANTS by the VENDOR and PURCHASERS, and where the restrictive STIPULATIONS are comprised in SCHEDULES (a).

Recitals.	PARTIES, A., vendor, 1; B. & C., purchasers, 2. WHAS the sd
Contract.	A. has contracted with the sd B. & C. for the absolute sale to them as jt tenants of the hds hby assured (formg pt of an este laid out for bldg) & the inhance thof in fee simple subjt to the [reservons &] restrons hinafter contd for the sum of £—:
Agreement as to restrictive covenants.	AND WHAS upon the agrmt for the sd sale it was stipulated that the same shd be subjt to the restrons & covts by the sd B. & C. hinafter contd for the proton & benefit of the sd A. his hrs & assns & the respive owners for the time being of the other pts of the este (coloured — on the plan hto annexed) (b) of wch the pce of land hby assured forms pt [& that the sd A. shd also enter into the restrictive covts hinafter contd]; [or, Recital as to form of convce, p. 373, form XXII.]; NOW
Wit-nesseth.	THIS INDRE WITNETH that in psuance, &c., conson, (the rect, &c.) & also in conson of the covts hinafter contd on
Grant.	the pt of the sd B. & C., the sd A. as benefi owner doth hby grt unto the sd B. & C., pcels referrg to plan, p. 379, with rt to use of roads & drains, p. 384 (c); [Reservons of easemts, &c., to vendor, p. 386 et seq.]; To HOLD the same premes UNTO & to the use of the sd B. & C., their hrs & assns, SUBJT [to the
Haben-dum, subject to	

(a) See p. 285, note, as to restrictive covenants, and the forms at pp. 287 et seq.

(b) See *Renals v. Cowlishaw*, 9 Ch. D. 125, 11 Ch. D. 866, approved in *Spicer v. Martin*, 14 A. C. 12.

(c) The following, if so intended, may be added here, as to which see p. 286, note; and p. 384, form xxxv., and note:

Benefit of covenants of other purchasers.	“Togr with all such benefit of & rt of enforcg any covts entd into by any past or future pchasers of any other plots of land formg pt of the — este, situate, &c., restrictive of the rt of bldg on or user of such respive plots as the sd A. may be able to convey or confer.”
---	--

obligon of contributg & payg a due proportion [accdg to the extent of their frontage towards the sd respive roads, or intd roads] of the expse of makg, maintaing, repairg & cleansg the sd roads, sewers & drains, until the same shl be adopted by & taken into the chge of the local authority, such proportion in case of dispute to be decided by the surveyor for the time being of the sd A., his hrs & assns, & subjt] to the restrons & condons hinafter [in the schdle hto] contd & imposed on the sd B. & C., their hrs & assns, as obligons intd to be bindg in perpetuity on the hds hby assured, & all future owners thof as far as the law will permit (d) : *Restrictive covts by B. & C. with*

PREC. LIV.
—
contribu-
tion for
maintain-
ing roads,
&c.

(d) The following may, if so intended, be added here with reference to the cases of *Keates v. Lyon*, 4 Ch. 218, and *Renals v. Cowlishaw*, 9 Ch. D. 125, 11 Ch. D. 866, and the other cases referred to, p. 286, note:—

“And to the intent also that the sd restrons & condons shl (as far as the law will permit) enure for the benefit of & be enforceable by any pson for the time being claimg title to or intted in any hds now or lately formg pt of the — este, situate, &c., under any convce by way of sale made by the sd A. since the — day of — or hrafter to be made by him or his succors in title who may be aggrieved or whose ppty may be injured by the breach or neglect of any of the sd restrons or condons.”

Restrictive
covenants
to be en-
forceable
by other
purchasers.

The following is another form of clauses as to roads and sewers where the conveyance includes a moiety of the roadways:

“*Convce of plots numbered by referce to plan*, includg a moiety of all streets or roads adjoining the sd respive plots of land so far as the same are co-extensive thwith, TOGR with rts of foot, horse & carriage road at all times & for all pposes in common with the vendor, his hrs, gtees, & assns, over & along all streets & roads formed, made & opened to communicate through, in, or upon any pt of the estes now or late of the sd A. whof the sd plots of ground hby grted form pt, when & so often as the same streets & roads are or shl be resply formed, made & opened for use, but not further or orwise. AND TOGR also with the free use (in common as afsd) of the drains or sewers made or intd to be made under the sd streets & roads resply, with power to open into & make communicons with the same resply, makg good all damage done thby & restorg the surface of the sd streets & roads as soon as may be, RESERVG nevless to the sd A., his hrs, gtees, & assns, & his & their tenants, the like

Clauses as
to roads
and sewers.
Another
form.

PREC. LIV. *A. as to bldg, &c., p. 424 (a), referrg, if need be, to a plan, & the stipulons, if convenient, being contd in a schdle: [Similar restrictive covts by A. with B. & C., mutatis mutandis]: Covt [or mutual covts] to give notice of covts, p. 424 (b): [Provo for re-entry by A. on breach of covts, p. 425]: [Acknmt & undertakg by A. as to munimts, p. 418]. IN WITS, &c.*

[Schdle or Schdles of restrictive stipulons.]

free & unrestricted rts of way & passage at all times & for all pposes (in common as afsd) over & along all the streets & roads afsd, And also the like use (in common as afsd) of the sd drains & sewers, with liberty to enter upon the 'sd streets or roads for the ppose of openg into or makg communicons with such drains or sewers, makg good all damage done thby & restorg the surface as soon as may be, *Habendum to pchaser*, to the intent nevless that so much & such pt or pts resply of the sd plots of ground resply hby conveyed as are in the sd plan shown to be pts of streets or roads or intd streets or roads may resply for ever hrafter remain open & unbuilt upon & be added to & become pts of such streets or roads resply. *Covt by pchaser with vendor* will leave open & unbuilt upon so much & such pt or pts of the sd plots hby conveyed as are delineated & descd in the sd plan as portions of streets or roads & are intd to be set apart for such ppose, AND WILL when thrunto required by the Local Board at his or their own expse pave, flag, make & form with pper materials & in a workmanlike mner the sd portions of such streets & roads resply so as to be fit for carriages, carts, & wagons, with pper causeways where necy [AND WILL make any alterons in the levels or gradients of the afsd portions of the sd streets or roads wch may be so required], AND ALSO will when required as afsd make & construct a sewer or drain under each of such portions of the sd streets or roads in accordce with such requiremts, AND WILL at all times cleanse, repair, & maintain the sd portions of the sd streets or roads & the sewers thrunder until the same shl be adopted by the local authority."

(a) See also CONDITIONS OF SALE, p. 287; as to the wording of the covenant, see *Re Fawcett*, 42 Ch. D. 150.

(b) It would be desirable that a memorandum of the deed should be endorsed on one or more of the covenantor's title-deeds to ensure that purchasers from him shall have notice of the covenants. See *ante*, p. 285, note.

LV.

DEED of COVENANT *between VENDORS and PURCHASERS of land* FORM. LV.
laid out in BUILDING PLOTS (c).

THIS INDRE made the — day of —, betn the sevl Parties.
 psons who have signed their names & affixed their seals to
 these psnts (other than the pties hto of the second pt) hinafter
 called the pchasers of the one pt, & A. of, &c., & B. of, &c.,
 hinafter called the vendors of the other pt: WHAS the este wch Recitals.
 is delineated on the plan hrupon endorsed, & wch is situated
 at — in the parish of — in the coy of —, was by an Conveyance
 indre, &c., assured to the use of the vendors, their hrs & assns; to vendors.
 AND WHAS the vendors have appropriated or laid out as bldg Estate laid
 sites divers pts of the sd este wch are hinafter designated as out.
 “The Lots,” & are distinguished on the sd plan by the
 numbers from 1 to — inclusive, & by the colours pink &
 blue, & have appropriated or laid out as roads other pts of
 the sd este distinguished on the sd plan by the colours yellow
 & brown & their distinctive names & have dedicated to the
 public the roads coloured yellow on the sd plan, & intend to
 dedicate to the public the roads coloured brown on the sd plan
 as soon as the pper local authority shl be willg to adopt the
 same: AND WHAS each of the pchasers has recently pchased Purchase
 from the vendors one or more lots, & the vendors have made of lots.
 or are about to make pper convces of the same to the respive
 pchasers thof in fee simple; AND WHAS the parlar lot or lots so How each
 pchased as afsd by each of the sd pchasers will appear by purchaser's
 referce to the no or nos entd opposite to his name in the lot is dis-
 first schdle hto, all the nos so entd correspondg with those tinguished
 by wch the lots are distinguished as afsd in the plan; AND in sche-
 WHAS, upon the contracts for the sd sevl pchases hinfte reld dule.
 to being entd into, it was agrd that each of the sd pchasers, The sales
 his hrs & assns, shd observe & pform such of the stipulons made
 contd in the second schdle hto, as are applicable to the lot or subject to
 lots pchased by him as afsd, [& that the vendors, their hrs & stipula-
 tions.

(c) Notice of this deed should be endorsed on the conveyance to A. and B., and also on the conveyance of each lot. See *ante*, p. 285, note.

As to laying out part of a settled estate for building purposes, see Settled Land Act, 1882, s. 16.

PRRC. LV.

Wit-
nesseth.Covenants
by pur-
chasers
with each
other and
the vendor
to perform
stipula-
tions in
schedule.Covenant
by vendors
to perform
stipula-
tions.Definition
of terms in
schedule.

assns, shd observe, &c., *as above, sayg*, "the unsold lots"] [& the roads coloured brown on the sd plan], & that for effectuatg such agrmt these psnts shd be made & exted: NOW THIS INDRE WITNETH that in conson of the premes each of the pchasers doth hby for himself & his assns, covt with every two & more & each one of the other pchasers & their & his respive hrs & assns, & also separately with the vendors, their hrs & assns (a), THAT he the sd covtor, his hrs & assns, & all psons derivg title through, under, or in trust for him or them resply, as lessees, mtgees, or orwise howsr, shl & will at all times for ever hrafter observe & pform such of the stipulons contd in the 2nd schdle hto as are applicabale to the lot or lots pchased by him; AND the vendors hby for themselves & their assns jtly covt with each of the pchasers, his hrs & assns, that the vendors, their hrs & assns, will, &c., *as above, sayg*, "the unsold lots [& the roads coloured brown on the sd plan];" AND IT IS HBY mutually agrd & decl'd betn & by the sevl psons pties hto that, in the constron & for the pposes of these psnts & of the 2nd schdle hrunder written, the follg terms or expressions shl have or bear the sevl meangs next mentd, that is to say, "the vendors" shl mean & include the sd A. & B., & their assns & the survor of them, his hrs & assns; "the surveyor" shl mean & include the surveyor for the time being of or employed by "the vendors"; "license" shl mean a license in writg by & under the hands of "the vendors" or their duly authorised agent; "the plan" shl mean the sd plan hrupon endorsed; "the lots" shl mean the portion of the sd esta appropriated or laid out as afsd for bldg pposes; the "unsold lots" shl mean the lots not sold to the respive pchasers; & "a lot" or "the lot," shl mean one of the "lots"; & "the private roads" shl mean the roads coloured brown on the plan; "the public roads" shl mean the roads coloured yellow on the plan; a "private road" or a "public road" shl mean one of the "private roads" or "public roads" resply; & "owner" with referce to any lot or lots, shl mean & include the pson to whom the same lot or lots has or have been or is or are about to be conveyed as afsd, &

(a) In framing a deed of this nature the cases of *Renals v. Cowlishaw*, 11 Ch. D. 866, and *Everett v. Remington*, [1892] 3 Ch. 148, must be borne in mind; see p. 286, note.

his hrs & assns : PROV'D ALWAYS & it is hby agrd that the vendors or the owner of any lot may at any time enforce the observe or pformce of any of the sd stipulons by any action or pcdg agst any other or others of them witht makg any pson a deft thto other than the pson committg or sufferg the breach of such stipulons wch is complained of in such action or pcdg & that these psnts may be reced as a conclusive answer to any objon for want of pties in that respt in any such action or pcdg : In wtrs whof the sevl psons pties hto of the first pt, have attached & affixed their respive signatures & seals to these psnts, on the days mentd bfe & agst their signatures resply, & the sd A. & B. have hrunto attached & affixed their respive signatures & seals the day & yr first above written.

PREC. LV.

Proviso
that any
one person
may sue
any other.

Testimo-
nium.

The first schdle refd to by the foregoing indre.

No. of Lot.	Purchaser's Name.	Date of Execution by Purchaser.	Purchaser's Signature and Seal.	Witness.

The second schdle refd to by the foregoing indre.

[Restrictive stipulons, see p. 287 et seq.]

LVI.

CONVEYANCE in FEE for BUILDING purposes, in consideration of a perpetual RENT-CHARGE (b), with the BENEFIT of COVENANTS and a POWER OF DISTRESS over ADJOINING LAND, existing as an INDEMNITY against a prior overriding RENT-CHARGE. VARIATIONS where the PRIOR Rent-charge is to be borne by the PURCHASER. PROVISIONS as to REDEMPTION of rent-charge (c).

PREC. LVI.

PARTIES, A., vendor, 1 ; B., pchaser, 2 ; Recite conve to A.,
“ of the hds hby grted togr with other hds ” subjt to a perpetual

Recitals.

(b) As to sales in consideration of a rent-charge and the power of re-entry, see p. 305, note.

(c) As to the stamp on a conveyance in consideration of a rent-charge, see

PREC. LVI.	<i>rent-charge of £40 & to certn covts; Conveyce by A. to X. of pt of the land subjt to the rent-charge & chging the whole rent-charge on that pt in exoneron of the land retained by A. & contg covts by X. & a power of distress, & other provons for indemnifying A. & the land retained; AND WHAS the sd A. has agrd with the sd B. for the sale to him of the hds hby grted in conson of the yrly rent-charge of £30 hinafter limd & the covts by the sd B. hinafter contd; NOW THIS INDRE WITNETH that in psuance, &c., & in conson of the yrly rent-charge hinafter limd to the sd A., & of the covts by the sd B. hinafter contd, the sd A., as benefl owner doth hby grt unto the sd B., pcells, p. 377: TOGE</i>
Contract.	<i>WRTH the full benefit of all the covts by the sd X. & powers & remedies in the sd indre of, &c., contd or orwise existg for securg the paymt by the sd X., his hrs & assns, & indemnifying the sd A., his hrs & assns, & the hds hby grted agst the paymt of the sd yrly rent-charge of £40 by the same indre chged exclusively on the hds thby assured to the sd X., To HOLD the same UNTO the sd B., & his hrs, To THE USE that the sd A., his hrs & assns, shl rece a perpetual yrly rent-charge of £30 to commce from the date of these psnts & to be chged upon & issuing out of all the premes hby grted & to be pd witht any dedon (a) by eql half-yrly paymts on the — day of —, & the — day of — in every yr, the first paymt thof to be made on the — day of — next (b), AND SUBJT & chged as</i>
Wit-nesseth.	
Grant.	
Together with benefit of covenants.	
Habendum.	
Limitation of rent-charge.	

the Stamp Act, 1891, s. 56 (2). This deed does not require registration under 18 & 19 Vict. c. 15, s. 12, and is not affected by the Lands Charges Registration and Searches Act, 1888, which relates to land charges created otherwise than by deed only; see s. 4.

(a) As to these words, see p. 305, note (e).

Statutory remedies for rent-charge.

(b) The Conv. Act, 1881, s. 44, gives to the owner of any annual sum charged on land or the income of land, not being rent incident to a reversion, the following remedies for recovering the same and the costs arising from non-payment, so far as they might have been conferred by the instrument creating the charge, but subject to the interests having priority over the charge, namely, if the charge is in arrear for twenty-one days, a power of distress, if the charge is in arrear for forty days a power to enter and take the rents and profits, and also whether he enters and takes possession or not, a power to limit a term of years to a trustee upon trusts for raising the charge and costs; and that enactment is by the Settled Land Act, 1890, s. 9, extended to a grant by a tenant for life under the Settled Land Acts for building purposes, reserving a perpetual rent. Powers of distress and re-entry may, therefore, be omitted; the following are the usual forms of such powers which would, if inserted, come in at this point; it is conceived

afsd, To THE USE of the sd B., his hrs & assns for ever; AND THE sd B. doth hby covt with the sd A., his hrs & assns, that he the sd B., his hrs & assns, will henceforth pay to the sd A., his hrs & assns, the sd yrly rent-chge of £30 at the times & in the mner hinfte appted for the paymt thof, free from all dedons (c) : AND FURTHER, &c., *for erectg & maintaing bldgs, &c., & restrictive covts*, see p. 424 : And will permit the sd A., his hrs & assns & his or their agents, once in every yr in the day-time, on givg to the tenant or occupier for the time being of any dwellg-house or bldg upon the sd premes hby grted, — days prevs notice in writg to enter into & upon the same to view the state of repair & condon thof : *Power of re-entry*, p. 425 (d) : [PROVD ALWAYS & it is hby agrd & decld that if the sd B., his hrs or assns, shl at any time within the sd period of

PREC. LVI.

Covenant
to pay rent-
charge.Power to
purchaser
to redeem
rent-
charge.

that the power of distress is not affected by the Bills of Sale Acts, see p. 306, note :—

“AND TO THE FURTHER USE, that if any pt of the sd rent-chge hby limd shl at any time be unpd for twenty-one days after any of the days hinfte appted for the paymt thof, then & so often it shl be lful for the sd A., his hrs & assns, to enter into & distrain upon the sd premes hby grted or any pt thof, to the intent that thby or orwise the sd rent-chge, & every pt thof so unpd, & all costs & expses occased by the non-paymt thof, may be pd & satisfied, AND TO THE FURTHER USE, that if any pt of the sd rent-chge shl at any time be unpd for forty days after any of the days hinfte apptd for the paymt thof, then & so often, although there shl not have been any legal demand made thof, it shl be lful for the sd A., his hrs & assns, to enter into & upon, & to hold the same premes or any pt thof, & to take the rents & profits thof, until he or they shl thby or orwise be pd the sd rent-chge, & the arrears thof due at the time of entry or aftwds to become due durg such posson, togr with all costs occased by the non-paymt thof, such posson, when taken, to be witht impeachmt of waste” [restriction of power as to time, p. 526, note (a), *mutatis mutandis*].

Power of
distress.Power of
entry.

(c) If the land is sold subject to the prior rent-charge instead of being exonerated from it, the recital of the contract for sale and the habendum will be, “subjt to the sd rentchge of £—— reserved by the hinfte recited indre of, &c.,” and a covenant by the purchaser to pay and keep the vendor indemnified against the rent-charge of £40 will be added. See p. 422, form VII.

Sale
subject to
prior rent-
charge.

(d) Compare the form in Precedent LVII., *infra*, p. 546.

PREC. LVI.

Power to
vendor to
compel re-
demption.

lives in being & twenty-one yrs thrafter (a), give six calr months' notice in writg expirg within the last-mentd period to the sd A., his hrs or assns, of his or their desire of pchasg the sd rent-chge, the sd A., his hrs & assns, shl after the expiron of the sd notice on paymt by the sd B., his hrs or assns, of such rent-chge up to the day of pchasg the same, & of the sum of £——, convey & rele the same rent-chge to the sd B., his hrs & assns, or as he or they shl direct; Provd also that if the sd A., his hrs & assns, shl within, &c., *as above*, give six calr months' notice in writg, expirg as afsd, to the sd B., his hrs or assns, of his or their desire of requirg the redmon of the sd rent-chge by the sd B., his hrs or assns, then the sd B., his hrs or assns, shl upon the expiron of the sd notice redeem the same for the sum of £—— wch shl be thrupon pd by him or them to the sd A., his hrs or assns, togr with the sd rent-chge up to the day of redmon, & upon such paymt being made the sd A., his hrs or assns, shl convey & rele the sd rent-chge to the sd B., his hrs or assns, or as he or they shl direct](b). IN WITS, &c.

LVII.

PREC. LVII.

CONVEYANCE of land for BUILDING purposes by TENANT for LIFE of one undivided MOIETY under the SETTLED LAND ACT, 1882, and by the owner in FREE of the other MOIETY in consideration of TWO FREE FARM RENTS; with COVENANTS and power of RETENTION as INDEMNITY against an OVERRIDING rent-charge (c).

Recitals.

PARTIES, A., tenant for life of moiety, 1; B., owner of moiety, 2; C., pchaser, 3. WHAS the hds hby assured are

(a) This refers to the restriction of the power of re-entry to lives in being, &c.; see as to this, p. 306, note.

(b) The clause in the Conv. Act, 1881, s. 45, enabling the owner of land subject to a perpetual rent-charge or other annual sum to redeem it with the aid of the Land Commissioners (now the Board of Agriculture), does not apply to a rent reserved on a sale, see sub-s. 5.

(c) See the last Precedent and notes, and the Settled Land Act, 1882, s. 10; and as to the application of the Act to land held in undivided shares, see p. 459, note.

As to
limiting

A doubt has been sometimes felt whether a rent-charge can be limited on

subjt to a perpetual yrly rent-charge of £—— p.a. created by an indre, &c., & to covts & provons for securg the paymt thof: AND WHAS the sd A. is tenant for life in posson of one undivided moiety of the sd hds under an indre of settlemt, &c., & the sd B. is seised in fee simple in posson of the remaing undivided moiety thof: *Recite order of Ct, or clause in settlemt, authorisg sale by A. at fee farm rents*: AND WHAS the sd A. as to one undivided moiety of the hds hby assured by virtue of the powers vested in him under the Settled Land Acts, 1882 to 1890, & orwise as afsd, & the sd B. as to the other undivided moiety thof, have resply agrd with the sd C. for the absolute sale to him of the sd hds & the inhance thof in fee simple in posson in conson of the two sevl perpetual yrly rent-chges of £—— & £—— resply hinafter limd, & of the covts on the pt of the sd C. hinafter contd: NOW THIS INDRE WITNETH that in

PREC. LVII.

Overriding
rent.Title of
grantors.Agreement
for sale.Wit-
nesseth.

its original creation direct to the uses of a settlement; and to avoid question it has been sometimes limited to a person in fee to be regranted by him by a separate (or the same) deed to the intended uses: see *Fearne*, C. R. p. 528, note by Butler; and Butl. n. Co. Litt. 271 b., vii. 3; the ground of the doubt being whether each successive limitation might not be held to be of a distinct rent, so as to invalidate the ulterior limitations after the first estate tail for remoteness; but there seems no valid reason why one and the same rent should not be reserved direct by way of use for successive estates amounting together to the fee; see 2 Byth. & J. Conv. 3rd ed. p. 8; and it is believed to be the usual practice so to reserve it.

a rent-
charge to
the uses of
a settle-
ment.

By the Settled Land Act, 1890, s. 9, where a perpetual rent-charge is reserved on a grant for building purposes by a tenant for life, this reservation is to operate to create a rent-charge in fee issuing out of the land conveyed with the remedies for recovery thereof conferred by the Conv. Act, 1881, s. 44; and the rent-charge is to go to the uses of the settlement; this enactment, in the cases to which it applies, precludes the doubt above referred to.

The form of limitation in a conveyance under the Settled Land Act (as in the text) is simpler than in a conveyance by revocation and appointment of the use under the ordinary express power of sale; since in the former case, the conveyance of the tenant for life passes the seisin to the grantee out of which the uses are served, whereas in the latter case, they have to be served out of the seisin of the original grantee under the settlement; but the above Precedent may be adapted without difficulty to that case.

There seems no objection to charging both rents on the entirety of the land, although one of the grantors is a limited owner. No attempt is made to reserve a power of re-entry in this case, as there are two rents, and it would be difficult to frame. The indemnity against the overriding rent ought, perhaps, to be severed so as to confine the remedy against each vendor to his proportion.

PREC. LVII. psuance of the sd agrmt & for the consons afsd the sd A.
 Grant. as benefl owner as to the undivided moiety of the sd hds of
 wch he is tenant for life as afsd by virtue of the powers
 vested in him under the Settled Land Acts, 1882 to 1890,
 & the hinbfe recited order of Ct, or, "the sd settlemt," &
 of every or any other power enablg him in this behalf, doth
 hby grt & convey, & the sd B., as benefl owner, as to the
 remaing undivided moiety of the sd hds, doth hby grt &
 convey unto the sd C., *Pcels*, To hold the same unto the sd
 C. & his hrs freed & dischged from the sd overridg yrly
 rent-chge of £——, To the use that there shl issue out of
 the entirety of all the sd hds & premes hby grted two per-
 petual yrly rents of £—— each, & that one of such rents
 shl remain & be to such uses upon such trusts & subjt to
 such chges, powers & provons as the sd first-mentd moiety of
 the sd hds & premes hby grted wd have stood limd & subjt
 to by virtue of the sd indre of settlemt if these psnts had
 not been made & exted, & that the other of such rents shl
 remain & be to the use of the sd B., his hrs & assns, the sd
 two sevl rents to rank *pari passu* & witht any priority of
 chge as betn themselves, & to commce from the date of
 these psnts, & to be pd to the pson or psons entled thto
 resply under the limons hinbfe contd by eql half-yrly paymts
 witht any dedon on the —— day of —— & the —— day of
 —— in every yr, AND subjt to & chged with the sd respive
 rents & all statutory & other powers & remedies for
 recoverg & compellg paymt of the same, To the use of
 the sd C., his hrs & assns, for ever: *Provo limitg liability*
 of tenant for life under implied corts for title, p. 411: AND
 the sd C. doth hby covt with the sd A., his succors in title
 & assns, that he the sd C., his hrs & assns, will henceforth
 pay to the sd A., his succors & assns, the yrly rent-chge
 of £—— first hby limd, & with the sd B., his hrs & assns,
 that he the sd C., his hrs & assns will henceforth pay to the
 sd B., his hrs & assns, the yrly rent-chge of £—— secondly
 hby limd at the times & in the mner hinbfe appted for the
 paymt of the sd rent-chges resply free from all dedons:
Corts by C., "with the sd A., his succors in title & assns,
 & also as a separate covt with the sd B., his hrs & assns,
 that, &c.," as to bldg, &c.: AND the sd A. & B. do hby &

Haben-
 dum.

Reserva-
 tion of
 rents.

Covenant
 by pur-
 chaser to
 pay rents,
 &c.

Covenant of
 indemnity

as a separate covt each of them doth hby covt with the sd C., his hrs & assns, that the sd A. & his succors in title, & the sd B. his hrs & assns, will duly pay the sd overridg rent-chge of £——, & pform & observe the covts & provons for securg the same contd in the sd indre of, &c., & will at all times keep indemnified the sd C., his hrs, exs, ads, & assns, agst the sd rent-chge, covts, & provons: AND further, that if default shl at any time be made in paymt of the last-mentd rent-chge or any pt thof, or in the pformce & ob-servce of the sd covts & provons or any of them, & the sd C., his hrs, exs, ads, or assns, or his or their tenants, shl be called upon to & shl pay the same rent or any pt thof, or shl be put to any costs, damages, or expses in consequence of any such default as afsd, then & in every such case it shl be lful for the sd C., his hrs & assns, to retain the sd respive rents of £—— each hby limd or eir of them or any pt thof resply: AND also to enter into (a) & distrain upon so much of the land upon wch the sd rent of £—— is chged as is not hby assured, & to enter into & upon & to hold the same premes or any pt thof, & to take the rents & profits thof witht im-peachmt of waste until he or they shl have been fully reim-bursed the amt so pd, & all such costs, damages, or expses as afsd. IN WITS, &c.

PREC. LVII,
—
by vendors
against
overriding
rent.

Power of
retention
and dis-
tress and
entry.

(a) There may be some doubt whether these powers of distress and entry can be given by a tenant for life proceeding under the Settled Land Acts; in addition to the doubt as to whether such powers can be conferred in perpetuity (see *Dunn v. Flood*, 25 Ch. D. 629, above, p. 306, note), and the further doubt (adverted to in the same note), whether the power of distress may not be affected by the Bills of Sale Acts. The powers of entry and distress might be restricted as to time by adding the clause at p. 526, note, *mutatis mutandis*.

As to
powers of
distress
and entry.

LVIII.

PREC.
LVIII.
—CONVEYANCE of FREEHOLD LAND by MORTGAGOR and
MORTGAGEE in consideration of a RENT-CHARGE, which
is substituted as security (a).

Recitals.

Agreement
for sub-
stitution
of rent-
charge.Wit-
nesseth.

Grant.

Haben-
dum.Power for
mortgagees
to enter
(b).

A., *mtgor* (hinafter called the vendor), 1; B. & C. *mtgees* (hinafter called the *mtgees*), 2; D., *pchaser* (hinafter called the *pchaser*), 3. *Recite mtge*, p. 351; *State of mtge debt*, p. 373; *Agrmt for sale*, p. 544: AND WHAS it has been agrd that the sd premes shl be assured in mner hinafter expd, & that such provons shl be made for substitutg the sd rent-chge for the sd premes hby assured as a secy to the *mtgees* for the moys secd by the sd indre of *mtge* as are hinafter contd: NOW THIS INDRE WITNETH, that in conson of the yrly rent of £——, hinafter limd, & of the covts & provons hinafter contd., & on the pt of the *pchaser*, his hrs & assns, to be pformed & observed, the *mtgees* as *mtgees* at the reqt of the vendor, do & each of them doth hby grt & rele, & the vendor as benefl owner doth hby grt & confirm unto the *pchaser* & his hrs, *Pcels*, p. 377; *Habendum* UNTO the *pchaser* & his hrs, *free from mtge*, p. 395; To THE USE that the *mtgees*, their hrs & assns, shl for ever hrafter rece, &c., *Reservon of rent-chge in fee*, p. 544, & subjt thto To THE USE of the *pchaser*, his hrs & assns; *Covt by pchaser*, “with the *mtgees*, their hrs & assns, & also as a separate covt with the vendor, his hrs & assns,” for paymt of rent-chge, p. 545, & as to *buildg*, &c., see p. 424; *Proro*, that if durg the lives or life of H.M. the Queen & her issue now livg & the survors & survivor of them, & twenty-one yrs after the death of the last survivor of them, or within any further period of time within wch this psnt power or condon may lfully be given or created, the sd rent-chge of £—— shl be in arrear for twelve calr months, the *mtgees*, their hrs or assns, may, at any time thrafter within the period of

(a) This saves the expense of a new mortgage of the rent-charge; but the *ad valorem* stamp duty will, as it seems, be the same, namely, the conveyance duty and 6d. per cent. on the mortgage debt in respect of the substituted security; see the Stamp Act, 1891, schedule, MORTGAGE; 26 Sol. J. p. 403.

(b) See p. 305, note, and the form at p. 425.

time afd & notwg any actual or constructive waiver of any prevs cause or rt of re-entry, enter upon the sd premes hby assured or any pt thof in the name of the whole, & thrupon the same premes shl remain to the use of & be vested in the mtgees, their hrs & assns, in all respts as if these psnts had not been made or exted: *Acknmt by mtgees to pchase as to munimts retained*, p. 418: AND IT IS HBY DECLD betn the vendor & the mtgees, that the sd rent-chge of £—— hnbfe limd to the mtgees, is so limd to the intent that the same shl be substituted for the sd premes hby assured as a secy to the mtgees, their exs, ads & assns, for the ppal moys & intt secd by the sd indre of mtge, & shl be subjt to the like equity of redmon & the like power of sale, & other powers & provons for securg the paymt of the sd ppal moys & intt, as such premes were subjt to immedly bfe the exon of these psnts, with such modifcons as the case may require: AND IT IS HBY FURTHER AGRD, that until notice to the contrary from the mtgees, their exs, ads, or assns, to the pchaser, his hrs or assns, the rect of the vendor, his hrs & assns, for the sd rent-chge hby limd, shl be a suffit dischge to the pson or psons paying the same. IN WITS, &c. (c).

PREC.
LVIII.
—

Rent-charge substituted as security.

Receipt of vendor to be sufficient.

LIX.

CONVEYANCE of several PERPETUAL RENT-CHARGES (SUBJECT as to one to a PRIOR RENT-CHARGE) and of a PLOT of ground let on a BUILDING LEASE. CONCISE FORM without RECITALS. PREC. LIX. —

PARTIES, A., vendor 1; B., pchaser, 2. WITNETH, &c., conson, “for the pchase, subjt as hinafter appears, of the fee simple of the yrly rent-chges & plot of land hby grted,” (the rect, &c.,) the sd A., as benefl owner, doth hby grt unto the sd B., ALL THOSE sevl perpetual yrly rent-chges, amtg togr to the sum of £——, of wch resply, & of the respive lands & ppty out of wch the same resply issue, the parlars

Wit-nesseth.

Conveyance of rent-charges.

(c) It would be desirable to endorse notice of this deed on the mortgage deed if retained by the mortgagee.

PREC. LIX. are stated in the first pt of the schdle hto, & wch lands are resp'y delineated in the plan hrunto annexed, & are in such plan resp'y edged red, & each of wch is marked with the amt of the rent-chge to wch the same is subj't, AND ALL future paymts of the sd resp'ive rent-chges, AND ALL powers & remedies for recovery of the sd rent-chges & the benefit of all covts, condons, & provons contd in the resp'ive indres mentd in the first pt of the sd schdle hto, by wch the sd rent-chges were resp'y created (a): AND ALSO all that plot of freehd land, situate, &c., also delineated in the sd plan, & thrin edged blue, & wch is let on lease for the term of yrs & at the yrly rent, the parlars whof are stated in the second pt of the sd schdle hto: To HOLD all the premes, hby grted UNTO & TO THE USE of the sd B., his hrs & assns, SUBJT as to the rent-chge of £—— mentd in the schdle hto to the paymt thereout henceforth of the yrly sum of £10, being a proportionate but unapportioned pt of a yrly rent-chge of £25, wch by an indre, &c., was made issuing & payable out of a plot of land includg the sd land out of wch the sd rent-chge of £—— issues, BUT WITH THE BENEFIT of all powers, remedies & covts existg as an indemnity agst paymt of an undue proportion of the sd rent-chge of £25, or of any expses or

And land.

Habendum.
Subject to over-riding rent-charge.

(a) The following is a form of description of a single rent-charge in the parcels where there are no recitals:—

Description of rent-charge. “ALL THAT perpetual yrly rent-chge of £——, issuing & payable out of ALL THAT pce of ground, &c., situate, &c., & contg, &c., & bounded, &c., & the messe, &c., thron erected, wch sd pce of ground, messe, & premes, were by an indre, &c., conveyed unto the sd X., his hrs & assns, reservg the sd perpetual yrly rent-chge of £—— thereout unto the sd Y., his hrs & assns, & wch rent-chge was made payable qtly, free from all dedons except the ppty-tax, on the four usual qtr-days, with powers, covts, & provons for securg the same, & wch sd rent-chge has by virtue of divers mesne assurces & acts in the law, & ultimately by an indre dated, &c., & made, &c., become & is now vested in the sd A. as absolute owner thof in fee simple, AND ALL future paymts of the sd rent-chge, TOGR WITH the full benefit of all powers, remedies, & covts subsistg for securg & enforecg paymt of the sd rent-chge.”

damages on acct thof, AND SUBJT as to the sd plot of land hby grted to the residue now unexpired of the sd lease mentd in the second pt of the schdle hto: *Covt by B. to pay the yrly sum of £10, to “ the pson or psons for the time being entled to rece the same,” & to indemnify A. thfrom, see p. 545, note.* IN WITS, &c. (b).

PREC. LIX.
—
And to building lease.

The SCHEDULE above refd to.

Part 1.

Amounts of Rent-charges.	Dates of Deeds by which the Rent-charges were created.	Contents and Situation of Lands out of which the Rent-charges issue.	To whom the Rent-charges were made Payable.	To whom the Lands were limited.	Days on which the Rent-charges were made Payable.

Part 2.

[*Parlars of plot of bldg land.*]

LX.

CONVEYANCE *under the LANDS CLAUSES CONSOLIDATION ACT, 1845 (8 & 9 Vict. c. 18) of FREEHOLDS and LEASEHOLDS by a TENANT FOR LIFE to a RAILWAY COMPANY with the CONCURRENCE of a TRUSTEE in whom the legal Estate of the LEASEHOLDS is vested. VARIATIONS where the PURCHASE-MONEY being under £200 is PAID to TRUSTEES nominated under the 71st section (c). ALSO where the sale is in consideration of a RENT-CHARGE.*

PREC. LX.
—

PARTIES, A., tenant for life (hinafter called the vendor), 1; B., tree, 2; [D. & E., trees nominated under the 71st section,

- (b) Notice should be given to the persons by whom the rent-charges are payable.
- (c) The sale and conveyance should, when possible, be made by the tenant

PREC. I.X.

Recitals.

That the
lands areVariations
for sale for
a rent-
charge.

9]; The — Rly Co incorpd by the — Rly Act, 18—
(hinafter called the Co), 8 [4]. *Recite lease*, p. 357, comprisg,
“with other hds, the hds hby assned,” *statg pcels shortly*;
Devolon of leasehds to K., p. 359; *Will of K.*, devisg “the
hds hby grted with other hds [by the description of, &c.]”
to the use of A. for life, & bequeathg the leasehds to B. & C.
upon trusts correspondg with uses of freehds, & apptg B. & C.
exs: Death, probate, & seisin of testor, pp. 365 & 359: *Death*
of C. AND WHAS the hds hby grted & assned resply are

for life under the Settled Land Acts (see p. 326, note, and Precedent xviii.,
p. 467, and the notes thereto); but recourse to the powers of the L. C. C.
Act, ss. 7, 9, may still occasionally be necessary; and where the sale is for a
rent-charge the powers of the former Act would not be available, if the case
is not within the S. L. A. 1882, s. 10.

If the sale is in consideration of a rent-charge (as to which see the
L. C. C. Act, 1845, ss. 10, 11, and the Amendment Act of 1860 (23 & 24
Vict. c. 106, s. 2); *Eyton v. Denbigh, &c., Ry. Co.*, 6 Eq. 14, 488; 7 Eq.
439; *Re Gerard and Beecham's Contract*, [1894] 3 Ch. 295), the recital of the
contract for purchase will be, “In conson of a yrly rent-chge of
£—— payable half-yrly as hinafter mentd, the amt of wch
rent-chge has been determined by two able practical sur-
veyors, psuant to the provons of the statutes in that behalf,
& wch rent-chge is to include compenson, &c., *as in the text*,”
and the conveyance will be, “In conson of the rent-chge hinafter
limd & of the covts by the Co hinafter contd & in exercise of
all statutory or other powers enablg the vendor in this
behalf:” *habendum* “UNTO & to the use of the Co & their
assns for ever, they the Co or their assns yieldg & paying
henceforth unto the vendor or his assns or other the pson or
psons who but for the assurse hby made wd hrafter for the
time being be entled to the rect of the rents & profits o
the sd hds hby assured one clear yrly rent-chge of £——
payable half-ylry on the —— day of —— & the —— day
of —— free from all taxes & dedons, except ppty-tax, the
first half-yrly paymt thof to be made on the —— day of
—— next, & the sd rent-chge to be a first chge on the tolls
& rates authorised by or payable under the special Acts of
the Co.” Add a covenant by the Company, “that the Co will at all
times hrafter duly pay the sd rent-chge hinbfe limd to the
vendor or his assns or the pson or psons afsd at the times &
in the mner at & in wch the same is hinbfe made payable
witht any dedon except as afsd.”

required by the Co for the pposes of their rly & undertakg authorised by the — Act, 18—, & the subseqt special acts of parliamt relatg to the Co, or some of them, & the Co are under those acts & the genl acts incorpd thwith, or some of them, authorised to take & use the sd hds for the pposes aisd: AND WHAS by virtue of the powers conferred on them resply by the sd acts, or some of them, the Co have agrd with the vendor for the pchase of the hds hby grted for an este in fee simple in posson, & the hds hby assned for the residue of the sd term of — yrs grted by the sd indre of lease subjt to the annl rent of £—, being an apportioned pt of the sd rent of £—, reserved by the sd lease, & subjt to the covts by the lessee, & condons in the sd lease contd so far as they relate to the hds hby assned, at the price of £—, being the sum determined by two able practical surveyors nominated one by the vendor & one by the Co accdg to the provons of the Lands Clauses Consolidon Act, 1845, wch sum it was agrd shd include [the (a) value of all mines & minls under the hds hby grted, & also] com- penson for severce of the sd hds hby grted & assned resply from other ppty of the vendor, or orwise injuriously affectg such other ppty in exercise of the powers given by the sd acts or any of them, [& for damage of every description, whether for removal, loss of trade (b), goodwill, inconvenience, or orwise, & shd also be in full satisfon for all accommodon & other works & things wch might orwise be required to be made or done under the sd acts or any of them for the benefit or accommodon of the adjoining ppty of the vendor, save & except the accommodon works & things specified in

PREC. LX.

—
required
for the
railway.Agreement
for sale.

(a) The Company are not entitled to any mines of coal, ironstone, slate, or other minerals, unless the same are expressly purchased by them; see the references in p. 327, note (c); see also as to the vendor's rights of working, if the Company do not purchase the minerals, *Pountney v. Clayton*, 11 Q. B. D. 820; *Midland Ry. v. Robinson*, 15 Ap. Cas. 19. A tenant for life unimpeachable for waste is not entitled to any part of the compensation money paid by the Company in respect of the minerals, whether the sale is made under the L. C. C. Act, or the ordinary express power of sale, or under the Settled Land Acts: *Re Robinson*, [1891] 3 Ch. 129, 134.

(b) Compensation for loss of trade is part of the consideration for the sale for the purpose of stamp duty: *Commissioners of Inland Revenue v. Glasgow, &c., Ry. Co.*, 12 App. Ca. 315.

PREC. LX.

—
Payment
by com-
pany of
purchase-
money into
Court.

Wit-
nesseth.

Grant of
freeholds.

Wit-
nesseth.

Assign-
ment of
leaseholds.

Haben-
dum.

Where the
purchase-
money is
paid to
trustees
nominated
for that
purpose.

the schdle hto]: [AND WHAS it has been agrd that these psnts shl contain the covts hinafter expd]: AND WHAS the Co on the — day of — duly pd the sd sum of £— into Ct, to an acct entled, &c. (a); NOW THIS INDRE WIT. NETH that in psuance of the sd agrmt, & in conson of the sum of £—, so pd by the Co as afsd (the paymt whof in mner afsd the vendor doth hby acknowe) the vendor, as benef owner, by virtue of the powers or authorities vested in him by the sd acts, or some of them or orwise, doth hby grt & convey unto the Co (b) ALL THOSE pces or pcels of land, messes or tenemts & hds situate in the parish of — & coy of —, contg in the whole by admeasuremt —, & bounded, &c., wch sd premes were late in the occupon of —, & are now in the occupon of the Co, *referce to deposited plans, &c., p. 380, form XIII.* [togr with, or, “except & reservg out of the assurce hby made,” all mines & minls under the sd hds & premes]: *Habendum*, UNTO & TO THE USE of the Co & their assns: AND THIS INDRE, &c., that the sd B. as tree, by direon of the vendor doth hby assn, & the vendor as benef owner by virtue, &c., *as above*, doth hby assn & confirm unto the Co, *leasehd pcels in the same form as the freehd pcels*; *Habendum*, to the Co & their assns for the residue now unexpired of the sd term of — yrs grted by the sd lease, subjt to the paymt of the yrly rent of £—, being an apportioned pt of the rent of £— reserved by the sd lease, & subjt to the covts by the

(a) Where the purchase-money is under £200 and over £20, and the payment is to be made to trustees nominated under 8 & 9 Vict. c. 18, s. 71, say, “AND WHAS the vendor is desirous of nominatg the sd D. & E. to be the trees to whom the sd pchase-moy shl be pd, & it has been agrd that such nominon shl be effected by these psnts; NOW THIS INDRE WITNETH that in psuance of the sd agrmt the vendor doth hby with the approbon (hby testified) of the Co, nominate the sd D. & E. to be the trees to whom the sd pchase-moy of £— shl be pd: AND THIS INDRE ALSO WITNETH that for effectuatg the sd sale, & in conson of the sum of £— upon the exon of these psnts pd by the Co to the sd D. & E., the rect whof is hby acknowed, the vendor, &c.”

(b) The parcels are often put into a schedule.

lessee & condons contd in the sd lease, & henceforth to be performed & observed, so far as they relate to the premes hby assned, & so far as such covts & condons may affect the sd premes in the hands of the Co & their assns; *Provo restrictg liability of tenant for life under implied covts for title*, p. 411; [*Covt by vendor to pay apportioned pt of rent & pform covts, &c., of lease in respt of ppty retained by him*, p. 419, with the *varions in the notes*; *Covt by Co to pay apportioned pt of rent, & pform covts, &c., of lease, so far as they relate to the premes assned*, “& may affect the sd premes in the hands of the Co & their assns,” & *for indemnity of the vendor & the rest of the ppty comprd in the lease*, p. 419, with the *varions in the notes* (c)]: AND the Co do hby for themselves & their assns covt with the vendor & his assns, to the intent that this covt may enure for the benefit of all psons hrafter havg or claiming title to the adjoining lands & hds of the vendor that they the Co or their assns will within ——— calr months from the date of these psnts exte do & make [accdg to plans & specifcons wch have been already prepared & signed on behalf of the Co by K. their engineer, & wch have been approved of & signed by the vendor, *or*, “in a good & workmanlike mner, & with pper materials”] & for ever hrafter maintain in good repair & condon for the benefit of the vendor & his assns, or other the pson or psons havg or claiming title as afsd, the accomodon & other works specified in the second schdle hto. *Acknmt & undertakg by vendor as to munimts*, p. 418. IN WRTS, &c.

PREC. LX.

Covenant
by com-
pany to
execute
accommo-
dation
works.

[*Schdles of Pcels, Accomodon Works, if any, & of Munimts.*]

(c) As it may be assumed that the company will purchase the reversion of the leaseholds, unless held for very long terms, these mutual covenants may generally be omitted.

LXI.

PREC. LXI.

CONVEYANCE *by a RAILWAY COMPANY of SUPERFLUOUS LAND NOT in a TOWN (a).*

Recitals. *PARTIES*, Rly Co (hinafter reld to as the Co), 1; A., *tenant for life*, 2; B. & C., *trees*, 3. **WHAS** the Co is seised in fee simple free from incumnces of the pce of land hby conveyed, wch is superfluous land of the Co, not required for the pposes of their undertakg, & the same adjoins land wch forms pt of the settled estes of the sd A., of wch he is tenant for life under an indre, &c., whof the sd B. & C. are the psnt trees: **AND WHAS** the Co have, by a notice in writg under the hand of their secretary, offered to sell the sd pce of land to —, the vendor thof to the Co, but he has declined to pchase the same: **AND WHAS** the sd A., as tenant for life under the sd indre of, &c., has agrd with the Co for the pchase of the inhance in fee simple in posson free from incumnces, of the sd pce of land for the sum of £——, wch is intd to be pd out of moys in the

Company seised of superfluous land.

Notice to sell to vendor.

His refusal to buy.

Agreement for purchase by trustees.

Sale of superfluous land by railway companies.

(a) See the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), ss. 127 *et seq.* If the sale is of land not in a town, and not to an adjoining owner, the recital will be that notice has been given to all the adjoining landowners in succession offering to sell to them, and that they have all declined. As to what is superfluous land, see *Beauchamp v. G. W. Ry. Co.*, 3 Ch. 745; *Hobbs v. Midland Ry. Co.*, 20 Ch. D. 418; *G. W. Ry. Co. v. May*, 7 E. & Ir. Ap. 283; *London & S. W. Ry. Co. v. Gomm*, 20 Ch. D. 562; *Hooper v. Bourne*, 5 App. Cas. 1; *In re Thackwray and Young*, 40 Ch. D. 34; and as to what is "land in a town," see *Carrington v. Wycombe Ry. Co.*, 3 Ch. 377; *L. & S. W. Ry. Co. v. Blackmore*, 4 E. & Ir. Ap. 610. See also on both points, *Dunhill v. North-Eastern Ry. Co.*, [1896] 1 Ch. 536. Land over a tunnel, *Metropolitan District Ry. Co. and Cosh*, 13 Ch. D. 607; or under an arch, *Medliner v. Midland Ry. Co.*, 11 Ch. D. 611, is not "superfluous." The Company usually stipulate that their title shall be accepted without investigation, and there will be no deeds to be covenanted to be produced. The sale must by s. 127 be without reservation (*Re Thackwray and Young's Contract*, 40 Ch. D. 34); and a covenant by the purchaser to re-sell the land to the Company if required vitiates the sale (*London & S. W. Ry. Co. v. Gomm*, *ubi sup.*); but if the covenant relates only to a part of the land, only as to that part (*Ray v. Walker*, [1892] 2 Q. B. 88), and the Company may impose restrictions as to the user of the land: *Re Higgins*, 21 Ch. D. 95. A prohibition against building, &c., which would not avail against the Company's rights, revives on the re-sale of the land as superfluous land: *Bird v. Eggleton*, 29 Ch. D. 1012. As to the rights of the Company's assigns of surface lands as superfluous, where the Company has not purchased the mines, and subsidence has been caused, see *Pountney v. Clayton*, 11 Q. B. D. 820.

hands of the sd trees arisg from a sale or sales of lands subjt to the trusts of the sd indre of, &c.: NOW THIS INDRE WITNETH that in conson of the sum of £——, pd by the sd B. & C. out of such moys as afsd by the diron of the sd A. to the Co (the rect, &c.), the Co, by the diron of the sd A., do hby grt (b) unto the sd B. & C., *pcels referrg to plan*, p. 379, the nos. on wch refer to the correspondg nos. on the Parliamentary deposited plans & book of referce thto of the Co relative to land in the sd parish of ——: *Habendum to B. & C. & their hrs to the uses of the settlemt*, p. 395. IN WITS, &c.

PREC. LXI.

Wit-
nesseth.

Grant.

LXII.

CONVEYANCE of COPYHOLDS *under the LANDS CLAUSES CONSOLIDATION ACT by the GUARDIAN of an INFANT to a SCHOOL BOARD (c).*

PREC. LXII.

PARTIES, A., guardian, 1; the School Board for ——, incorpd by virtue of the Elementary Educon Act, 1870 (hinafter called the Board), 2. *Recite title of K., the infant; Apptmt of A. as his gdian; Agrmt for pchase & sale as in last precedent, saying “for a customary este in fee in posson,” & omittg referce to mines & minls: Paymt of pchase-moy into Ct*, p. 468: NOW THIS INDRE WITNETH that in psuance, &c., & in conson

Recitals.

Wit-
nesseth.

(b) In a conveyance by the promoters of the undertaking under the Lands Clauses Consolidation Act the word “grant” implies covenants for title (s. 132), which are substantially the same as those which would be implied by a conveyance by the Company as beneficial owners under the Conv. Act, 1881, s. 7; see as to implied covenants, *Elph. N. & C. Interp.*, p. 423.

Covenants
implied
by word
“grant.”

(c) See the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 95, incorporated with the Elementary Education Act, 1870 (33 & 34 Vict. c. 75); see s. 20. As to the powers of a School Board under that Act, see *Rolls v. School Board for London*, 27 Ch. D. 639. As to the redemption of tithe, see Tithe Commutation Act (41 & 42 Vict. c. 42), s. 1. The conveyance must be entered on the Rolls of the Manor. As to enfranchisement, see the Copyhold Act, 1894, s. 1 *et seq.* As to the bar of the entail of copyholds by enfranchisement, see *Ex parte School Board for London*, 41 Ch. D. 547. The sale and conveyance might now generally, in the case of an infant, be effected under the Settled Land Acts; as to which see p. 465, note, and Precedent XXI., p. 474.

PREC. LXII. of the premes the sd A. doth hby, by virtue of the power or authority vested in him by the sd act or the acts incorpd thwith, convey unto the Board, *pcels*, p. 377: *Habendum*, Unto the Board & their assns, nevs until the premes shl have been enfranchised subjt to the same fines, rents, heriots, suits & services as have htofore been payable & of rt accustomed in respt thof. *Cort by A. agst incumbces*, p. 406 (a). IN WITS, &c.

LXIII.

PREC.
LXIII.

CONVEYANCE *by the COMMITTEE of a LUNATIC under the LANDS CLAUSES CONSOLIDATION ACT, 1845, of LANDS PURCHASED by the MANAGERS of a PUBLIC ELEMENTARY SCHOOL under the ELEMENTARY EDUCATION ACT, 1870 (b).*

Recitals.
The
managers.

Conditional
contract.

PARTIES, A., "the committee of the este of B., a lunatic," 1; C., D., E., &c., *the managers of the school, or proposed school* (hinafter called the managers), 2. *Recite title of B. in fee*, p. 362: AND WHAS the managers are the managers of a public elementary school, known as the — School, at —, in the parish of —, & coy of — [or, if the school is not founded, say: AND WHAS the managers are desirous of establishg a public elementary school to be known as the — School, at, &c.; & they have obtained the approval of the Educon Departmt to the establishmt of such school]: AND WHAS by virtue of the powers vested in them respby the Elementary

(a) The insertion of an express covenant is considered preferable to making A. convey "as trustee"; see p. 399, note.

(b) See the L. C. C. Act, 1845 (8 & 9 Vict. c. 18), s. 7; the Lunacy Act, 1890 (53 Vict. c. 5), ss. 116, 117, 120 (a), 124, and the definition of "property" in s. 341. The sale may be in consideration of a perpetual rent-charge: *Re Ware*, [1892] 1 Ch. 344. See also the Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 21, and note, *ante*, p. 559. Under the L. C. C. Act the conveyance appears to be properly made by the committee in his own name, and not, as under the Lunacy Acts (see Rules in Lunacy, 1892, r. 124, W. N. [1892], O. & R. 13), in the name of the lunatic; see the next Precedent. As to lunatics not so found, see the Lunacy Act, 1890, s. 116. As to the procedure where the vendor becomes lunatic after the contract, see the Act, ss. 120 (i), 135; *Re Pagani*, [1892] 1 Ch. 236.

Mode of
conveyance
by com-
mittee of
lunatic.

Educon Act, 1870, the sd A. has agrd to sell condonally, upon the pper consent in that behalf being obtained, & the managers have agrd to pchase as a site for a [an addl] school-house for such school, the pce of land [with the messes & bldgs thron] hinafter conveyed at the price of £——, being a sum determined, &c., wch it was agrd shd be taken in full compensation, &c., *see Precedent LX.*, p. 555: AND WHAS, by an order made on the —— day of ——, by ——, in the mre of the sd lunacy, on the applicon of the sd A., it was ordered that the sd A. shd be at liberty to carry the sd condonal contract into effect, & that it shd be reld to the masters in lunacy to settle & approve of a pper convce of the sd pce of land & premes to the managers accdly, & that the sd A., as committee of the sd B., shd exte & join with all necy pties in extg such convce when approved by the sd masters: AND WHAS ——, one of the masters in lunacy, has settled & approved of these psnts as a pper convce of the sd pce of land & premes, psuant to the sd order of the —— day of ——; & in testimony of such his approval the seal of the sd masters has been affixed in the margin hrof; *Recital that the pchase-moy has been pd into Ct, as in Precedent LX.*, p. 556 (c): NOW THIS INDRE WIT-NETH that for effectuatg the sd sale, & for the conson afsd, & under & psuant to the sd order of the —— day of ——, & the powers & provons of the Elementary Educon Act, 1870, & the Acts incorpd thwith, the sd A., as committee of the sd B. (d), doth hby grt & convey unto the managers, *pcels*, p. 377; *Grant.* *Habendum*, UNTO & TO THE USE of the managers, their hrs & assns, UPON TRUST for the pposes of a public elementary school, within the meang of the Elementary Educon Act, 1870, & for no other ppose whatever (e). IN WITS, &c.

PREC.
LXIII.
—Order con-
firming
contract.Approval
of draft
conveyance
by master
in lunacy.Wit-
nesseth.

(c) See *Re Milnes*, 1 Ch. D. 28; *Re Buckingham*, 2 Ch. D. 690.

(d) The covenant against incumbrances implied by the committee conveying in that character under the Conv. Act, 1881, s. 7 (see p. 399), is a covenant binding the committee personally and not the estate of the lunatic.

(e) The Act requires (s. 21) "that the conveyance shall express that the land shall be held upon trust for the purposes of a public elementary school within the meaning of this Act, or some one of such purposes which may be specified, and for no other purpose whatever."

As to cove-
nants for
title in
conveyance
of lunatic's
estate.

LXIV.

PREC.
LXIV.
—

CONVEYANCE of FREEHOLDS *belonging to a LUNATIC by his COMMITTEE, subject to RESERVATIONS of MINERALS and SURFACE RIGHTS and EASEMENTS, and RESTRICTIVE COVENANTS, contained in the CONVEYANCE to the LUNATIC (a).*

Recitals.

PARTIES, A., lunatic, "a pson of unsound mind, actg by B., of, &c., as committee of his este;" for a lunatic not found by inquisition say, "a pson of unsound mind not so found by inquisition actg by B., of & as the pson appted to exercise powers of a committee of his estes, 1;" the sd B., 2; C., pchaser, 3. Recite convee to A., contg reservons to the vendors X. & Y., their hrs & assns, of minls, with rts of workg them by surface or underground works, & rts of way, & water, & other easemts, & contg also restrictive covts, entd into by A. with the vendors as to bldg on, & user of the land, the reservons & covts being noticed shortly: AND WHAS the sd B. has agrd to sell condonally, &c., continue recital of condonal contract for sale, "subjt to the reservons & restrons contd in the sd indre of, &c.," & the order confirmg the same, & the approval of the convee by the master, as in Precedent LXIII.: AND WHAS the sd B. did on the — day of — pay into Ct the sum of £—— to the credit of "A., a pson of unsound mind, proceeds of sale of real este," or other credit mentioned in the order: NOW THIS INDRE WIT-

Wit-
nesseth.

Mode of
conveyance
by com-
mittee of
lunatic.

(a) See references in p. 560, note, to the Lunacy Act, 1890. The committee conveys in the name and on behalf of the lunatic; see Rules in Lunacy of 1892, r. 124. As to a sale on behalf of a lunatic under the Settled Land Act, 1882, see s. 62 of the Act, and above, p. 466, note. An undivided share was held not to be saleable under the repealed Lunacy Regulation Act, 1853, without the concurrence of the co-owners: *Re Weld*, 28 Ch. D. 514; but under the Act of 1890 there appears to be no difficulty as to this. As to the power to sell under the Settled Land Act, 1882, in that case see *Re Gaitskell*, 40 Ch. D. 416; above, p. 466, note. The Court has jurisdiction, under the Lunacy Act, 1890, s. 124, to authorise a committee selling the land of a lunatic to enter into on his behalf with the purchaser the covenants usual and proper in such conveyance, including the ordinary covenants for title: *Re Ray*, W. N., 1896, 12; [1896] 1 Ch. 468.

NETH that in psuance of the sd agrmt & order, & in conson of the sum of £—— pd as afsd, the sd A., actg by the sd B. as afsd, as benefl owner (b), doth hby grt unto the sd C., *pcels*, p. 377 : *Grant. Habendum to C. in fee subjt to reservons & restrons in former concee*, p. 394, *form VII.*; *Covt by C. with A. to indemnify A. agst restrictive covts*, p. 422, *form VI.* : [AND THE sd A., actg by the sd B., as afsd, doth hby, &c., *acknmt & undertakg as to munimts*, p. 418 (c)]. IN WITS, &c. (d).

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LXIV.
—

LXV.

CONVEYANCE of FREEHOLDS by official and other TRUSTEES of a CHARITY (e).

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—

PARTIES, A., the Secretary for the time being of the Board of Charity Commrs for England & Wales, & as such the official

(b) As to covenants binding the lunatic, see above, last page, note (a).

(c) The possession of the deeds by the committee or other custodians on behalf of the lunatic would, it is presumed, be deemed in law the possession of the latter, so that the acknowledgment, &c., is properly given in his name; see p. 414, note.

(d) The signature will be, "A. by B. committee of his este." The attestation will be, "Signed, &c., by the above-named B. as the committee, & in the name & on behalf of the above-named A., &c., & by the sd B. in his own name & as his own act & deed." A testimonium and attestation in the ordinary form would suffice; see *Lawrie v. Less*, 14 Ch. D. 249.

(e) Many charitable trust deeds contain powers of sale, but this power cannot be exercised without the authority of a statute, "or of a Court or Judge of competent jurisdiction, or according to a scheme legally authorised, or with the approval of the Charity Commissioners": Charitable Trusts Amendment Act, 1855 (18 & 19 Vict. c. 124), s. 29 (see as to meaning of this, *Re Masons' Orphanage, &c.*, [1896] 1 Ch. 54, affirmed 1896, W. N. 26). But as the power of the Commissioners to authorise a sale is given by the Charitable Trusts Act, 1853 (16 & 17 Vict. c. 137), s. 24, which by s. 62 exempts certain institutions and any charity wholly maintained by voluntary contributions from the operation of the Act, and as the two Acts have to be construed together, charities exempted from the Act of 1853 are exempt from the Act of 1855. As to

Acknowledgment as to deeds in conveyance by the committee of a lunatic. Form of execution of and attestation to a conveyance by the committee of a lunatic.

tree of charity lands (hinafter called "the official tree"). 1; B., C. & D., &c., being the trees of the, *name of charity* (hinafter reld to as "the trees"), 2; & E., *pchaser*, 3. WHAS the pties hto of the 2nd pt are the duly constituted trees of the sd, *charity* (hinafter reld to as "the charity"): AND WHAS the lands hinafter descd conveyed form pt of the estes of the sd charity: AND WHAS by an order made by the Board of Charity Commrs for England & Wales on, &c. [by a scheme made under the Endowed Schools Act, & approved by Her Majesty in Council on, &c.], the legal este in the land hby conveyed was vested in the official tree in trust for the sd charity: AND WHAS by an order of the sd Board made on, &c., the trees were authorised within — months from the date thof to sell the lands descd in the schdle thto [being the lands hinafter descd & conveyed] for not less than the sum of £—, & to do & exte all pper acts & assurces for carrying the sd sale into effect: AND by the same order the official tree was authorised & directed to concur in the convce of the sd land if his concurrce shd be required: NOW THIS INDRE WIT- NETH that in conson of the sum of £— pd to the trees by the sd E. for the pchase of the fee simple of the sd lands (the rect whof the trees hby acknowe) the official tree, psuant to

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Recitals.

Authority
to trustees
to sell.

Authority
to official
trustee to
concur.

Wit-
nesseth.

what amounts to "maintenance by voluntary contributions," see *Re The Corporation of Sons of the Clergy*, [1893] 1 Ch. 178; *Re The Clergy Orphan Corporation*, [1894] 3 Ch. 145; *Re Gilchrist*, [1895] 1 Ch. 367. The exemption in the Act of "any building registered as a place of meeting for religious worship" extends only to that building itself, not to other buildings and property held therewith: *Re John Street Chapel*, [1893] 2 Ch. 618. By the Act of 1855, s. 37, the official trustee of charity lands may be authorised by the Board to convey lands, including those vested in him by the Act of 1853, s. 48, and the Act of 1855, s. 15. See also s. 12 of the Act of 1869 (32 & 33 Vict. c. 110), substituted for s. 16 of the Act of 1860 (23 & 24 Vict. c. 136), enabling a majority of the trustees to convey on behalf of all the trustees and the official trustee. As to official trustees, see the Charitable Trusts Act, 1887 (50 & 51 Vict. c. 49), ss. 4, 5 and 6. By the Mortmain Act, 1891 (54 & 55 Vict. c. 73), ss. 5, 6, 9, the sale of land acquired by a charity under the will of a testator dying after the passing of the Act is made obligatory, except as therein mentioned.

The Allotments Extension Act, 1882 (45 & 46 Vict. c. 80), has not taken away from the Charity Commissioners the power of authorising a sale of charity lands vested in them under the Charitable Trusts Acts: *Parish of Sutton to Church*, 26 Ch. D. 173.

the authority given to him by the sd recited order, & at the reqt of the trees (testified by their exon hrof, but not so as to imply any covt) (a), hby conveys, & the trees as trees hby convey & confirm to the sd E. ALL, &c., *pcels*, to hold the same unto & to the use of the sd E., his hrs & assns: [*Acknmt by trees as to munimts retained*, p. 418]. IN WITS, &c.

PREC. LXV.

Grant.

Habendum
to pur-
chaser in
fee.

LXVI.

CONVEYANCE to TRUSTEES of the SITE of a CHURCH (b).

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PARTIES, A., donor, 1; The Rt Revd Father in God, B., by Divine permission Lord Bishop of — & ordinary of the

(a) The official trustee does not enter into any covenants; and the statutory covenant which would be implied by his conveying as trustee and under the Order is therefore excluded.

(b) See note below. The conveyance must be executed in the presence of two witnesses, it must be enrolled in the central office, and, if voluntary, it must be made at least 12 calendar months before the death of the grantor: see the Mortmain Act, 1888, Part II. Prior to consecration the site will be conveyed to the Ecclesiastical Commissioners.

NOTE ON CHARITABLE CONVEYANCES.

The Mortmain and Charitable Uses Act, 1888 (51 & 52 Vict. c. 42), which in effect re-enacts the prior law, and is amended as to the definition of land by the Mortmain and Charitable Uses Act, 1891 (54 & 55 Vict. c. 73), must be consulted where it is intended to make a conveyance to a corporation for any purpose, or to convey land or personalty to be laid out in the purchase of land for charitable (see s. 13 (2)) purposes. Part I. of the Act renders land assured to a corporation without licence from the Crown or of a statute for the time being in force liable to forfeiture. Licences from the Crown may be obtained in proper cases by application to the Board of Trade. Part II. of the Act renders every assurance of land or of personalty to be laid out in the purchase of land for charitable purposes void unless (1) the charitable purposes are to take effect immediately; (2) no provision for the benefit of the grantor is made, except a nominal rent, a reservation or grant of mines, minerals, or an easement, covenants as to building, &c., and a right of entry on breach of covenant. The assurance must, except in the case of stock in the public funds, be made by deed executed before two or more witnesses, and unless it is made in good faith

PRBO.
LXVI.
—
Recitals.

rectory [vicarage] & parish church of —, 2; C., D., E., F. & G., trees, 8. *Recite title of A.*, p. 362. AND WHAS addl church accomodon is required for the inhabitants of the parish of

for full and valuable consideration, it must be made at least twelve months before the death of the grantor; it must also be enrolled in the central office of the Supreme Court within six months after execution, unless in the case of an assurance of land to charitable uses which are declared by a separate instrument, in which case that instrument must be enrolled within six months of the assurance of the land. Parts I. and II. do not apply to an assurance by deed of land of any quantity for the purposes of a public park, a school-house for an elementary school, or a public museum; but a deed containing such an assurance and not made for full and valuable consideration must be executed not less than twelve months before the death of the grantor, and must be enrolled in the books of the Charity Commissioners within six months after execution. Part II. of the Act does not apply *inter alia* to "an assurance, otherwise than by will, to trustees on behalf of any society or body of persons associated together for religious purposes, or for the promotion of education, art, literature, science, or other like purposes, of land not exceeding two acres for the erection thereon of a building for such purposes, or any of them, or whereon a building used or intended to be used for such purposes, or any of them, has been erected, so that the assurance be made in good faith for full and valuable consideration;" but the trustees of the instrument may, if they think fit, at any time cause the instrument to be enrolled in the central office.

Sites for
churches,
glebes, &c.

By 43 Geo. 3, c. 108, land not exceeding five acres may be conveyed for or towards the erecting, rebuilding, repairing, purchasing or providing any church or chapel where the liturgy and rites of the Established Church are used, or a residence for the officiating minister, or the outbuildings, offices, churchyard, or glebe for the same. The consent of the ordinary, or in some cases of the patron, ordinary and incumbent, is required. A *feme covert* without her husband cannot convey under the Act, a disability which appears not to be removed by the Married Women's Property Act. Only one such gift is to be made by any one person, and no glebe exceeding fifty acres is to be augmented by more than one acre. Generally as to grants for sites for churches, see the Church Building Acts, 1818 to 1884, a list of which will be found in 47 & 48 Vict. c. 65.

Sites for
religious
worship
and burial-
grounds.

By the Places of Worship Sites Act, 1873 (36 & 37 Vict. c. 50), as amended by the Amendment Act, 1882 (45 & 46 Vict. c. 21), corporations (in some cases with certain consents) and certain limited owners may convey by way of gift, sale or exchange, in fee simple, or for a term of years, any quantity not exceeding one acre of land not being part of a demesne or pleasure-ground attached to a mansion-house, as a site for a church, chapel, meeting-house, or other place of divine worship, or for the residence of the officiating minister or for a burial-place. A grant by a tenant for life requires certain consents: see the Act of 1882, s. 2. If the property ceases to be used for the purposes of the Act it is to revert to lands from which it was severed. The Act of 1873 contains provisions as to payment of the purchase-money and the method of conveyance where the land is settled and in cases of disability. The Act of 1873, s. 5, enables conveyances to be made to the

— ; AND WHAS the sd A. has with the consent of the sd B. as ordinary of the parish of — agrd with the sd C., D., E., F. & G. to convey the hds hby assured to them in fee simple upon the trusts hinafter decld concerng the same: NOW THIS INDRE WITNETH that in psuance, &c., & in conson of the premes, he the sd A., with the consent of the sd B., doth hby grt unto the sd C., D., E., F. & G., *pcel*s, p. 377, To HOLD the same UNTO & TO THE USE OF the sd C., D., E., F. & G. in fee simple upon the trusts hinafter mentd, that is to say in trust that the sd C., D., E., F. & G. & the survors or survivor of them or other the trees or tree for the time being of these psnts, hinafter called the sd trees, shl permit a new church or chapel to be erected on the sd pce or pcel of land, such new church or chapel to be erected accdg to plans & elevons to be approved by the bldg committee for the time being apptd to superintend the erectn of the sd new

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And more church accommodation being required,

A. has agreed to give site for a new church.

Therefore with the consent of the Bishop A. conveys a site

To trustees in fee,

To permit a church to be built thereon.

Ecclesiastical Commissioners, or as they shall direct, and so that such conveyances shall take effect under the Church Building Acts.

As to conveyances of sites for schools for poor persons or for residences of schoolmaster, &c., see the School Sites Acts, 4 & 5 Vict. c. 38; 7 & 8 Vict. c. 37; 12 & 13 Vict. c. 40; 13 & 14 Vict. c. 40; 14 & 15 Vict. c. 24; 15 & 16 Vict. c. 49. In cases where a grant from a society is in contemplation, inquiry should be made whether any particular form of conveyance is required by the society.

School Sites Acts.

Some of the larger religious bodies have offices where information can be obtained as to forms adopted by them of conveyances of sites for chapels or charitable purposes. In some cases the trusts of conveyance for the above purposes are not set out at length, but are declared by reference to model deeds which have been enrolled.

Information as to Wesleyan trust deeds can be obtained at the Wesleyan Conference Office, 2 Castle Street, City Road, and the forms can be purchased at 66 Paternoster Row. Information as to, and forms of Congregationalist trust deeds, can be obtained from Messrs. Shephard, 31 and 32 Finsbury Circus. Information as to, and forms of Baptist trust deeds, can be obtained from John Howard, Esq., 42 Old Broad Street, E.C.

Nonconformists.

Nearly all the London synagogues using the Polish or German ritual are governed by the scheme contained in the Local Act (33 & 34 Vict. c. 116) and by bye-laws made thereunder. Information can be obtained at the office of the United Synagogue, 2 Charlotte Street, Portland Place, W. Information as to the Spanish and Portuguese Synagogue can be obtained from Messrs. Lindo & Co., 3 & 4 West Street, City, E.C. Information as to the West London Synagogue of British Jews, commonly known as the "Reform Synagogue," may be obtained from the Secretary, Upper Berkeley Street, Portman Square, W. Information as to the Jewish Board of Deputies and as to Jewish charities generally may be obtained from Lewis Emanuel, Esq., 36 Finsbury Circus, Secretary to the Board of Deputies.

Jews.

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To be used
for service,
&c. in the
United
Church of
England.

Provided
that one
half of the
sittings are
free or let
at a low
rent.

The pew
rents to be
held,

1st. To
satisfy any
debt in
respect of
the build-
ing of the
church, &c.

2nd. And
for repairs
and insur-
ance, the
purchase of
surplices,
books,
salaries.

3rd. To
pay the
surplus to
the incum-
bent for
the time
being.

Burials and
schools pro-
hibited.

A majority
of the trus-
tees (if it
includes

church or chapel, or the major pt of them in number, & by the sd A., his hrs or assns : AND ALSO do & shl use their or his best endeavour to procure the sd church or chapel when so built as afsd, to be licensed & consecrated to the intent that the same may for ever thenceforth be used as a place for the celebren of divine service & for the administron of the sacra-ments of baptism & the Lord's Supper accordg to the liturgy & rites of the Church of England, by the vicar or incumbent of — parish church afsd for the time being & his curates: AND IT IS HBY AGRD & DECLD that the sittgs in the sd church shl at all times hrafter be & remain free & unappropriated, or [& also do & shl with the approval of the sd incumbent for the time being, let the pews or sittgs in the sd church in such mner & for such prices as the sd trees shl from time to time think fit, provd that at least one-half of the sittgs in the sd church be free for or let at a low rent not exceedg — p. a. for each sittg to poor inhabitants of the sd parish of — for ever hrafter. And do & shl stand possessed of the moys to arise from the lettg of the sd pews & sittgs in the sd church upon trust by & out of the same to satisfy all moys due or wch may become due in respt of the complon & bldg of the sd church, the eron or complon of pews & all necy fittgs thrin, & in cannon with the licensg or consecron thof, or in any way incident thto, & also all expses incurred in repairing the sd church, & in keepg the same insured from fire, & in purchasg surplices, books, & other things necy for the sd church, & in paying the salaries to the clerk (if any), beadle, or other servants or officers, & all other annual outgs in respt of the sd church as the sd trees shall think fit, & upon further trust to pay the net annual surplus of the moys to arise from the lettg of the sd pews & sittgs to the incumbent of the sd church for the time being for his absolute use & benefit]. [PROVD ALWAYS & it is hby decl'd & agrd that the sd pce of land & heredit's shl not, nor shl any pt thof be used for burials, & that no school of any description shl be erected thrupon, or held or carried on in any bldg erected on the sd pce of land witht the licence of the sd A., his hrs & assns]: PROVD ALWAYS & it is hby agrd & decl'd that it shl be lful for the sd trees or a majority of them if the psnt vicar or incumbent

of the parish of — shl form one of such majority, & after the determinon of the incumbency of the psnt vicar or incumbent of the sd parish for the sd trees other than the incumbent of the sd parish for the time being to take such steps as may seem to them to be necy, and to use their best endeavours to procure the sd church or chapel to be made a district church or a district chapel, or a district parish church (as they may think fit): PROVD ALWAYS & it is hby agrd & decl'd that it shl be lful for the sd trees to convey & assure the sd pce or pcel of land & hds hby assured with all the bldgs and erons thron, & the appurts to the Ecclesiastical Commrs or any other corporon or body authorized by Act of Parliament to accept grts & convces of churches or chapels & the sites thof, upon & for the trusts, intents & pposes hinfte decl'd & contd of & concerng the same: PROVD ALWAYS & it is hby decl'd & agrd that the incumbent for the time being of the sd parish of —, until the sd church or chapel shl be made a district church or chapel, or district parish church, & aftwds the incumbent for the time being of the sd church or chapel (upon signifying in writg his willingness to act) shl always be one of the trees of these psnts & have the same powers as if he had been one of the origl trees, but so that after the determinon of the incumbency of the psnt vicar or incumbent no future incumbent of the sd parish church shall have power by virtue of his office as tree to prevent the sd church from being made a district church or district chapel or district parish church provd the remaing trees shl be unanimous in decidg to take steps necy for affectg the same: PROVD ALWAYS that except in the cases last afsd, 4 of the sd trees for the time being, or if the sd vicar or incumbent be psnt, 3 of the sd trees shl be a quorum for all the pposes of the trusts created by these psnts, & the decision of a majority of the trees psnt at a meetg shl bind the minority, & in case of an equality of votes the sd vicar or incumbent if psnt or in his absence the chairman of the meetg shl in addon to his own vote have a castg vote: PROVD ALWAYS & it is hby agrd & decl'd that upon the resignon, cession, or deprivon of the vicar or incumbent for the time being of the sd parish of — or the incumbent for the time being of the sd church or chapel after it shl have been made a district church or chapel

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LXVI.

the incumbent) and after the present incumbency, then the lay trustees may take steps for getting it made a district church.

The trustees may convey the land to the Ecclesiastical Commissioners or any other Church corporation upon the trusts of this deed.

The incumbent of the parish of — until the intended church be made a district church, and afterwards the incumbent of the new church, to be always one of the trustees.

No future incumbent of — to have power to prevent the new church being made a district church.

Except in the cases before

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—
mentioned,
four trus-
tees (or
three if the
incumbent
be one) to
form a
quorum.

or district parish church he sh^l cease to be a tree, & that when any lay tree resides out of the sd parish of — for more than 12 consecutive months or openly ceases to be a member of the Church of England he sh^l cease to be a tree of these psnts: PROVD ALWAYS & it is hby agrd & decl^d that the number of trees of these psnts sh^l never be more than seven, & that the lay trees sh^l never be less than four. IN WITS, &c.

Any incumbent resigning, &c., to cease to be a trustee. And any lay trustee going to reside away permanently to cease to be a trustee, or in case of his seceding from the Church of England.

LXVII.

PREC.
LXVII.
—

AGREEMENT *resting the PATRONAGE of a new CHURCH* in TRUSTEES (a).

Recitals.

PARTIES, The Rt Revd Father in God —, by Divine permission Lord Bishop of — and ordinary of the rectory [vicarage] & parish church of — (a), 1; A., “the patron of the same rectory [vicarage] & parish church,” 2; the Revd B., “rector [vicar] or incumbent of the rectory [vicarage] & parish of — afsd,” 3; C., D., E., F. & G., *proposed patrons*, 4. *WHAS* for the accomodon & convenience of a certn ption of the inhabitants of the parish of — afsd a new church is being built at — in the sd parish of — upon a site wch has been duly conveyed to the Ecclesiastical Commrs of England under the provons of the Church Bldg Acts: *AND WHAS* the sd new church is intended to be consecrated by the name of —: *AND WHAS* it has been arranged that the patronage or rt of nominatg a minister to the sd new church sh^l on its consecron be vested in the sd C., D., E., F. & G.,

(a) This form may be used where, previous to the consecration of a new church, the bishop, the patron, and the incumbent of the parish where the church is or is intended to be built agree to vest the patronage in any corporation, person and persons: see 8 & 9 Vict. c. 70, s. 23, and 11 & 12 Vict. c. 37, s. 4. As to vesting the patronage in a person who endows a hapel of ease when made a distinct parish, see 1 & 2 Will. 4, c. 38, ss. 23, 24; 1 & 2 Vict. c. 107, s. 7. As to the patronage of churches built by private persons or by subscription, see 5 Geo. 4, c. 103, ss. 6 to 12; 1 & 2 Will. 4, c. 38, ss. 2 to 9, 19, 20; 3 & 4 Vict. c. 60, s. 12; 14 & 15 Vict. c. 97, ss. 7 to 15.

or the major pt of them as trees, & in the trees for the time being of these psnts: NOW THIS INDRE WITNETH that in psuance of the power vested in them by the Church Bldg Act, 1845 (b), & the Church Bldg Act, 1848 (c), & of every other power in this behalf them enablg they the pties hto of the 1st, 2nd & 3rd pts do hby resply agree that when & as soon as the sd new church of — shl have been consecrated the patronage or rt of nominon to the same shl belong to & be exercised by & be vested in them the sd C., D., E., F. & G., their hrs & assns by the names of the trees of the church of —: PROV D ALWAYS that any pson who shl openly cease to be a member of the Church of England shl no longer be capable of actg as a tree, & a new tree may be appted in his place in the same mner as if he were dead: PROV D ALSO that no pson shl be capable of being appted a tree of these psnts unless he is a member of the Church of England: PROV D ALSO that an apptmt of a new tree of these psnts may be made during the period of three calr months from the vacancy occurg by the survivg or continuing trees or tree & after the lapse of such period by the bishop of the diocese, & that no such apptmt shl be made by the psonal repves of a survivg continuing tree: PROV D ALSO that the patronage of the sd new church shl not at any time be vested in more than five psons: AND IT IS HBY AGRD & DECLD that no convce of the rt of patronage hinfte conferred shl be made for any ppose other than for givg effect to an apptmt of a new tree or new trees of these psnts. IN WITS, &c.

PREC.
LXVII.

Trustee
seceding
from
Church of
England.
Trustee to
be member
of Church
of England.
Appoint-
ment of
new trus-
tees.

LXVIII.

CONVEYANCE of LAND as the SITE of a MISSION HALL (d).

PREC.
LXVIII.

PARTIES, A., "hinafter called 'the grtor,'" 1; B., C. & D., "hinafter collectively called 'the trees,'" 2. WHAS it is

(b) 8 & 9 Vict. c. 70.

(c) 11 & 12 Vict. c. 37.

(d) See an opinion of Sir R. Webster and others as to deeds of this nature, published by the Church Building Society, 7 Dean's Yard, S.W. This deed must be attested as regards the grantor's execution by two witnesses, and

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LXVIII.
—

desired to assure the hds hinafter conveyed or intd so to be as an ecclesiastical charity (a) for the benefit of the rector [vicar] of the parish [district] of —, & for the use of the members of the Church of England in the cure of the sd parish [district] in mner hinafter appearg: NOW THIS INDRE WITNETH that the grantor (*conson*, p. 375, *rect*, p. 375), as benef owner, doth hby grt unto the trees, *pcels*, p. 377: To HOLD unto & to the use of the trees, their hrs & assns, UPON TRUST to permit the same & all or any bldgs or bldg wch now are or may hrafter be erected on the sd premes or any pt thof to be used by the rector [vicar] for the time being of the parish [district] of —afsd, hinafter reld to as “the rector” [vicar] or his nominees or licensees as the case may be for all or any of the pposes followg, that is to say:

1. For the celebron of divine service in accordce with the rites & ceremonies of the Church of England as by law established.

2. As a school or schools for the educon of chln & adults or chln only of the labourg, manufacturg & other poorer classes in the sd parish [district], accordg to the pples of the Church of England.

3. As a residece or resideces for a teacher or teachers of the sd school or schools.

must be enrolled within six months, as it is in all respects subject to the Mortmain and Charitable Uses Act, 1888.

The draft should be submitted for approval to all societies to which application for a grant of money is made.

(a) As to the importance of showing that the charity is ecclesiastical where it is intended to provide against interference by the parish council, see the Local Government Act (56 & 57 Vict. c. 73), ss. 14, 75. In the trust of a building of a strictly non-sectarian charity the following provisions were inserted: “The bldg shl not be used for the pposes of any parlar church, religious body or political pty, but not so as to prevent the committee from letting rooms thrin for meetgs of committees connected with any parlar church, body or pty provd that they offer to let rooms on the like terms for meetgs of committees of all other churches, bodies or pties requirg the same.” “The institute shl be managed by a committee of 12 psons, 4 of whom shl be nominated by the urban sanitary authority of —, 4 by the School Board —, and 4 by a local charity.”

4. As a class-room, meetg-room or lecture-room for members of the Church of England for confirm or communicants' classes, or for other religious instrn, or for secular instrn of members of the Church of England.

5. As a place of meetg for clerical meetgs for social conferences of the clergy, for district visitors, for committees of any socs, parochial or orwise, connected with the Church of England, & for meetgs to be called in aid or for the benefit of any such socs.

6. As a place of meetg for a club or clubs of the labourg, manufacturg & other poorer classes of the Church of England in the sd parish [district].

7. As a lendg library for members of the Church of England.

8. For any other meetgs, or for any other objects, ends or pposes havg in view the spiritual, intellectual, moral or social wants of ~~professg~~ members of the Church of England in the parish wch the rector [vicar] may think desirable, but so that the consent of the Bishop of — for the time being (hinafter called the Bishop) be obtained thto if a number not less than half of the total number of trees for the time being shd require such consent to be obtained.

AND IT IS HBY DECLD that the sd premes & any such bldgs or bldg as afsd shl be in all respts under the sole managemt and control of the rector [vicar] (subjt always to the visitg power hinafter given to the Bishop, & such rector [vicar] shl from time to time direct for what ppose or pposes, & in what mner, the same shl be used within the limits hinfbe laid down: AND any school or schools wch may be held on the sd premes, & the educon & instrn to be given thrin, shl be under such sole managemt & control of the rector [vicar], who shl select, appt, & at his pleasure dismiss the teacher or teachers of the sd school or schools [with this reservon, namely, that no pson shl be appted to be a teacher who is not a *bonâ fide* member of the Church of England].

AND IT IS HBY AGRD & DECLD that it shl be lful for the trees, their hrs & assns, if they shl think it desirable, to alienate & sell or exchange the sd hds & premes hinfbe granted & conveyed, or any pt thof, & to rece any moy for equality of exchange & to apply the moy arisg from such sale or given on

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—

such exchange in the pchase of other premes or in the improvemt of any premes used or to be used for the pposes of this trust: PROVD ALWAYS that no such alienon shl be made witht the consent in writg of the Bishop (a): AND IT IS HBY AGRD that if any tree of these psnts shl reside out of the parish [district] for more than 12 consecutive months, or if in the opinion of the Bishop, rector [vicar] & the majority of the trees to be signified by writg signed by them he shall openly cease to be a member of the Church of England, he shall cease to be a tree: AND IT IS HBY AGRD that the power of appointg a new tree or new trees of these psnts shl be exerciseable by the rector, [vicar]: PROVD that no pson shl be capable of being apptd a tree of these psnts unless he be a member of the Church of England: PROVD ALWAYS & it is hby decl'd that the Bishop shl have the powers of a visitor over the trust premes & over the managemt & control thof, & the sd rector [vicar], shl in all things whatsr pertaing to the sd trust, observe & carry out all dirons or orders from time to time made or to be made by the sd Bishop: AND IT IS HBY AGRD that durg the absence, disability or suspension from duty of the rector [vicar] or the avoidce of the benefice all the powers & authorities hby vested in the rector [vicar], except the power of apptg a new tree of these psnts, may be exercised by, & that the power of apptg a new tree or trees of these psnts may be exercised with the consent in writg of the Bishop by the officiatg minister, or if there shl be more than one such minister, by the principal officiatg minister, of the Church of —, within the sd parish [district]: PROVD LASTLY, that if it shd be hrafter desired to use the sd premes or any pt thof for the pposes of a duly consecrated church, it shl be lful for the trees hrof with consent of the sd Bishop by deed executed by them to revoke & make void as to all or any pt of the sd premes the trusts hinf'e contd & to convey the sd premes or any pt thof to any pson or psons or corporations duly authorised to rece the same to be held for any of the pposes of the Church Bldg Acts. IN WRTS, &c.

(a) As to the other consent or order required, see *ante*, p. 563, note.

LXIX.

CONVEYANCE *under a JOINT POWER of APPOINTMENT of SURFACE LANDS, and of MINERALS under other Lands which were RESERVED to the VENDORS on Previous SALES of the SURFACE.*

PREC.
LXIX.
—

PARTIES, A. & B., vendors, 1; C., purchaser, 2: WHEREAS by an Recitals.
indure, &c., or by other assurances, instruments, or means subsequent Title to
thto, divers messes, lands, & hds, situate in the parishes of, &c., surface.
in the coy of —, & commonly known as the — este (of
wch the messes & land descd in the first pt of the first schedule
hto form pt), stand limd to such uses as the sd A. & B. shl by
deed jtly appt, & in default of such apptmt to the use of the
sd A. for his life wtht impeachment of waste, with remr to the use
of the sd B., his hrs & assns: AND WHEREAS divers lands formg pt Title to
of the sd — este, situate in the respive parishes of, &c., in minerals.
the sd coy of —, have from time to time been disposed of by
the sd A. & B., by way of sale, exchange, or otherwise, with an
exceptn or reservon of the coal & ironstone & other mines or
minls in or under the same, with rts of workg & gettg such
reserved mines or minls by means of underground or surface
workgs, or by underground workgs only, & such reserved
mines, minls & rts remain subjt to the uses to wch the sd —
este is subjt as hinbfe recited: AND WHEREAS the lands & hds so Reference
sold or disposed of with a reservon or exceptn of minls, are to schedule
descd in the second pt of the sd first schedule hto, in wch the
names of the respive psons to whom the same resply were
conveyed or disposed of, & the dates & parlars of the respive
convces or assurances thof contg such reservons or exceptns of
minls are specified: AND WHEREAS the lands descd in the sd first and plan.
schedule hto are delineated in the map or plan herunto annexed,
in wch the lands comprd in the first pt of such schedule are
coloured —, & the lands comprd in the second pt thof are
coloured —: AND WHEREAS the sd A. & B. have agrd with Contract
the sd C. for the absolute sale to him of the fee simple & inhance for sale.
of the lands descd in the first pt of the sd first schedule hto,
& of the mines of coal & ironstone & other mines & minls, so
reserved as afsd in or under the lands descd in the second pt of
such schedule for the sum of £—: AND WHEREAS it has been agrd Purchase

PREC.
LXIX.
—
money to
be paid to
vendors
jointly.
As to
succession
duty.
Wit-
nesseth.
Appoint-
ment.

Grant.
Surface
parcels.

Minerals.

Powers of
working.

that the whole of the sd pchase-moy shl be pd to the sd A. & B. jtly, & upon their jt rect: AND WHAS the sd B. has agrd to enter into such covt for paymt of the succession duty [and este duty if any], wch will become payable on the death of the sd A. in respt of the premes hby assured, as is hinafter contd: NOW THIS INDRE WITNETH, that in psuance, &c., & in conson of the sum of £—— now pd by the sd C. to the sd A. & B. (the rect, &c.), they the sd A. & B. as benefl owners, in exercise of every power or authority enablg them in this behalf under or by virtue of the sd indre of, &c., or any other convce or assurce subseqt thto, or any exception or reservon contd in any such convce or assurce or by any other means whatsr, do & each of them doth hby appt, & as & accdg to their sevl estes & intts, & by way of further assurce do & each of them doth hby grt & confirm unto the sd C., FIRST, ALL THOSE closes or pcels of land, messes, tenemts & hds situate, &c., parlarly descd in the first pt of the first schdle hto, & coloured —— in the plan hto annexed, includg all mines & minls in, upon, or under the same lands & premes, AND SECONDLY, ALL THE coal & ironstone, & other mines & minls whatsr, whether opened & in workg or not, wch under or by virtue of the exceptions or reservons contd in the respive convces or assurces mentd in the second pt of the first schdle hto or orwise the sd A. & B. or eir of them are or is entld to or have or has power to appt or dispose of, lying or being in or under the lands & hds situate, &c., wch are parlarly descd in such second pt of the sd first schdle, & are coloured —— in the sd map or plan, TOGR WITH all such liberties, powers, & authorities of enterg upon the sd lands descd in the second pt of the sd first schdle, & coloured —— in the sd map or plan, & searchg for, workg, gettg, dressg, & carrying away the sd coal, ironstone, & other mines & minls, & makg pits or shafts, & excavatg & drivg underground levels, passages, adits, & headways, laying down tramways, other ways & roads underground, & erectg bldgs, engines, pumps, machy, & works, & stackg or laying up the minls or refuse raised out of the sd premes, & makg roads or tramways over the surface of the sd lands or any other lands for workg, gettg, & carrying away the sd minls or orwise in relon thto, as under or by virtue of the sd respive convces or assurces mentd in the second pt of the sd first schdle hto or orwise, the

sd A. & B. or eir of them are or is entled to or have or has power to dispose of, BUT SUBJT to such liability as the sd A. & B. or eir of them are or is subjt to of makg compenson to the surface owners or occupiers of the sd lands & premes descd in the second pt of the sd first schdle, for any damage or injury done or caused by the exercise or use of any of the liberties & authorities afsd, TOGR WITH all way-leaves, water-courses, rts, easemts, & appurts, held, used, occupied, or enjoyed in connon with any of the mines & minls hby assured, or for workg, obtaing, gettg, or carrying away such mines & minls or the produce thof or orwise in relon thto: *Habendum to C. in fee*, subjt to the leases or agrmts for leases mentd in the sd first schdle hto, p. 393: *Provo restrictg liability of A. & B. under implied covts for title*, p. 411; *Covt by B. for paymt of succession duty [and este duty, if any], on death of A.*, p. 421; *Acknmt & undertakg by A. as to munimts*, p. 418, see p. 511, note. IN WITS, &c.

PREC.
LXIX.

Subject to liability of making compensation.

General words.

[Schdle of pcels in two pts, the composon of wch is indicated by the recitals.]

[Schdle of Munimts.]

LXX.

GRANT of RIGHT of WAY.

PREC. LXX.

PARTIES, A., grtor, 1; B. & C., grtees, 2. Recite the clog of a lane passg through lands of A., under the Highway Act, 5 & 6 Will. IV. c. 50, ss. 84 to 92, as amended by the Local Government Act, 1894 (56 & 57 Vict. c. 73), ss. 6, 13, on the applicon of A., the land being bounded as to pt by a farm & lands vested in B. & C. as devisees in trust under the will of X.: AND WHAS previously to the applicon for the sd order it was agrd by & betn the pties hto that the sd A., in conson of the sd B. & C. consentg to & not opposg such applicon, shd exte & enter into such grt & covt to & with them as trees of the will of the sd X., for securg a substituted rt of way over the lands of the sd A., & orwise, as are hinafter contd: NOW THIS INDRE

Recitals.

Agreement.

Witnesseth.

PASO. LXX. **WITNETH** that in psuance of such agrmt, & for the conson
Grant. afsd, the sd A., as benef owner, doth hby grt unto the sd B. &
Right of C. their hrs & assns (a), **FULL** & free rt & liberty at all times
way. hrafter, *continue as at* p. 383, along, over, & upon a new road
or lane made through the lands of the sd A., situate, &c., betn
the points marked, &c., in the plan drawn in the margin hrof,
& the bridge over the watercourse as shown in the sd plan, &
Covenant being ——— feet in length, & ——— feet in width (b), **AND** the sd
by grantor. A. doth hby covt with the sd B. & C., their hrs & assns, that
he the sd A., his hrs & assns, will at his or their own cost at
all times hrafter, keep & maintain the sd new lane or road over
wch a rt of way is hinfte grted, includg the sd bridge over the
Proviso. water-course, in a pper state of repair & condon: **PROVD**
ALWAYS that it shl be lful for the sd A., his hrs & assns, to
place & keep gates at the points marked, &c., on the sd plan,
he & they maintaing such gates in good repair & condon.
IN WITS, &c.

(a) If the dominant tenement does not appear from the earlier part of deed, insert "owners or owner of the dominant tenement."

(b) As to the importance of defining the way, see *Deacon v. South Eastern Ry. Co.*, 61 L. T. 377; W. N. 1889, 79. The covenant in the text imposes a perpetual liability on A., and his representatives, which is most inconvenient. Sometimes the words following, "to the intent so far as the law will permit to bind the sd lands, & the pson or psons from time to time entled to or intted in the same, but not so as to incur any psonal liability except for his own acts," are inserted, but, as pointed out, *ante*, p. 285, the assignees of A. are not bound, and the restriction of the covenants to A.'s own acts may be a little hard on the grantees. Perhaps the medium course may be adopted of restricting the covenant as to time by saying, "durg the period of ——— yrs from the date of these psnts," instead of "at all times hrafter." The owner of the easement has a right to repair it: *Elph. Introd.*, 123.

LXXI.

CONVEYANCE of an ADVOWSON. VARIATIONS for conveyance of a NEXT PRESENTATION only, and where the Vendor thereof is a TENANT for LIFE (c).

PREC.
LXXI.
—

PARTIES, A., vendor, 1; B., purchaser, 2. *WHAS* the sd A. is seised of the advowson & perpetual rt of presenton of & to the rectory & parish church of —, in the coy of —, for an este in fee simple in posson [for the term of his life under the limons of an indre of settlemt dated, &c., & made &c.]; *AND WHAS* the sd A. has agrd with the sd B. for the sale to him of the sd advowson, or perpetual rt of presenton [the first or next turn or rt of presenton, *if A. be tenant for life, add* “if the same shl become vacant during the life of the sd A.”] for the sum of £—; *NOW THIS INDRE WITNETH*, *conson*, (the rect, &c.) the sd A., as benefi owner, doth hby grt unto the sd B., *pcels, advowson, or next presenton*, see p. 382; *If the latter, & A. be tenant for life add*, wch durg the life of the sd A. shl first or next happen after the date of these psnts: *Habendum, for advowson*, “UNTO & TO THE USE of the sd B., his hrs & assns,” *for next presenton*, “UNTO the sd B., his exs, ads, & assns.” *IN WITS, &c. (d).*

Recitals.

Title of vendors.

Agreement for sale.

Witnesseth.

Grant.

Advowson.

Next presentation.

(c) As to sales of advowsons and next presentations, see 2 Dav. Prec. pt. 1, 30, 37; 1 Dart, V. & P. 280; and the “Incumbents’ Resignation Act, 1871,” 2 Dav. Prec. pt. 1, 356; and as to the law of Simony, see Phillimore on Ecclesiastical Law; and see also the report of the Royal Commission on Ecclesiastical Benefices of 1880, and the evidence appended. As to advowsons belonging to municipal corporations, see the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 121, 122.

(d) It is sometimes agreed that the vendor shall pay interest to the purchaser till a vacancy; see *Sweet v. Meredith*, 3 Giff. 610; in that case the vendor was not the incumbent, but that distinction does not seem to be regarded in practice; see Evidence taken by the Royal Commission of 1880. This payment may be secured by a bond of the vendor, or by his covenant, “that he, the sd A., his hrs, exs, or ads, will, from the date of these psnts, & in the meantime, until the sd rectory & parish church shl next become vacant [*add, if thought necy*, or if the psnt incumbent of the sd rectory & parish church shl be appted to a bishopric & the Crown shl thrupon psnt to the sd rectory & parish church, then until the sd rectory & parish

As to payment of interest till vacancy.

LXXII.

PRBO.
LXXII.
—

CONVEYANCE of GLEBE land by a Rector, with CONSENT of the PATRON and the ECCLESIASTICAL COMMISSIONERS under the Ecclesiastical Leasing Acts (a) to a COUNTY COUNCIL (b). GRANT and RESERVATION of RIGHTS of WAY.

PARTIES, A., "rector of the rectory & parish church of —, in the coy of —," 1; B., "patron of the sd rectory,"

church shl become vacant for the second time after the date of these psnts,] pay," &c.

Sometimes the purchase-money is invested in the names of trustees upon trusts for investment and payment of the income to the purchaser until the occurrence of a vacancy, and subject thereto in trust for the vendor.

As to sales
of glebe
lands.

Ecclesias-
tical Leas-
ing Acts.

(a) The conveyance in this case is made under the Acts which have the above misleading short title, namely, 5 & 6 Vict. c. 108 (1842); 21 & 22 Vict. c. 57 (1858); and 28 & 29 Vict. c. 57 (the latter relating only to sales for perpetual chief rents). The authority to sell is given by the Act of 1858, s. 1. As to the consents necessary, see the Act of 1842, s. 20 *et seq.*, and the Act of 1858, s. 1. As to the payment of the purchase-money, see the Act of 1858, s. 2. The execution of the conveyance by the necessary consenting parties is conclusive that the Acts have been complied with; see the Act of 1842, s. 7. By the Act of 1858, s. 1, three months' notice was to be given to the bishop, but the Glebe Lands Act, 1888, s. 11, substitutes for this the notice prescribed by the rules under that Act; see Statutory Rules and Orders, 1892, tit. "Benefice." The Act of 1858, by s. 6 excepted out of its operation lands capable of being sold under 14 & 15 Vict. c. 104 (extended by 24 & 25 Vict. c. 105, s. 3, to rectors and vicars), i.e., lands subject to leases renewable under the old practice, but as that Act must be almost spent the exception is unimportant. See also the provisions in s. 3 of 24 & 25 Vict. c. 105, giving to incumbents all the powers of sale, &c., possessed by any Ecclesiastical Corporation under any Act in force.

Glebe
Lands
Act, 1888.

The Glebe Lands Act, 1888 (51 & 52 Vict. c. 20), has created a new mode of procedure for the sale of glebe lands under the sanction of the Land Commissioners (now the Board of Agriculture) in lieu of the Ecclesiastical Commissioners, and with an enlarged range of investment for the purchase-money; but by s. 11 the powers of sale under the Ecclesiastical Leasing Acts are kept alive; and by s. 5, the Act is not to apply to land subject to a lease for originally more than 21 years, or where the rent is less than two-thirds the full value. If the sale were made under that Act the Board of Agriculture would not be made parties, but the order of the Board sanctioning the sale would be recited.

As to
convey-
ances to
County
Councils.

(b) See the Local Government (England and Wales) Act, 1888 (51 & 52 Vict. c. 41), s. 65, giving power to acquire land, and incorporating the provisions of ss. 176, 177, and 178 of the Public Health Act, 1875; s. 79, sub-s. (1), as to the corporate name, and dispensing with a licence in

2; the Ecclesiastical Commrs for England, 3; the Coy Council of the administrative coy of — (hinafter called the Coy Council), 4. *Recite seisin of rector*: AND WHAS it has been made to appear to the satisfon of the sd Commrs, that the sd pce of land may to the permanent advantage of the este & endowmts belonging to the sd rectory, be sold for the sum & in mner hinafter mentd: AND WHAS at a meetg of the Coy Council held on the — day of — it was resolved on the recommendon of the main roads & bridges committee that a sum not exceedg £—— shd be grted out of the coy fund to enable the sd committee to pchase the sd pce of land. AND WHAS the sd A., with the consent of the sd B., as patron of the sd rectory, & with the approval of the sd Commrs, has agrd to sell & the Coy Council has agrd to pchase, the fee simple in posson of the sd pce of land, togr with the rt of way hby grted over other pts of the glebe lands of the sd rectory, free from all chges & incumbces, but subjt to such reservon as is hinafter contd, at the price of £——: AND WHAS due notice of the sd proposed sale was given to the Rt Revd — Lord Bishop of —, on the — day of — last: NOW THIS INDRE WITNETH that in psuance of the sd agrmt, & in conson of the sum of £—— pd by the treasurer of the sd coy out of the coy fund to the acct of the Ecclesiastical Commrs at the Bank of England, as directed by the sd Ecclesiastical Commrs in that behalf (the paymt of wch sd sum is intd to be acknowed by a mem indorsed on these psnts (c), & the paymt whof the sd Commrs do hby acknowe, the sd A., with the consent (hby testified) of the sd B., as patron of the sd rectory of —, & also with the approval (hby

PRBO.
LXXII.

Agreement
for sale.

Notice
given to
Bishop.
Wit-
nesseth.

mortmain; s. 79, sub-s. (3), incorporating the various enactments relative to the acquisition of land on behalf of County or Quarter Sessions or Justices; and s. 80, as to payments out of the County Fund. See also as to dwellings for the working classes, the Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70); as to allotments, the Allotments Acts, 1887 and 1890, the Small Holdings Act, 1892 (55 & 56 Vict. c. 31); and as to the acquisition of land for volunteer corps, the Military Lands Act, 1892 (55 & 56 Vict. c. 43). If the purpose for which the land is acquired amounts to a "charitable use," the requirements of Part II. of the Mortmain Act, 1888 (51 & 52 Vict. c. 42), as to enrolment and otherwise, must be complied with.

(c) See p. 375, note.

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LXXII.
—
Grant.

Haben-
dum.

testified) of the sd Ecclesiastical Commrs, & in psuance of the power or authority in that behalf given to him by the Ecclesiastical Leasing Acts, & of every other power or authority enablg him in this behalf doth hby grt unto the Coy Council, *pcels*, p. 377, *Togr with, rt of way*, p. 383: *Reserron* to "the sd A., his succors & assns," of *rt of way*, p. 390: To hold the same Unto & to the use of the Coy Council, their succors & assns, SUBJT to the reservon hinfte contd, & also subjt to the tithe commuton rent-chge (if any), & to all other (if any) duties, paymts, & obligons, ecclesiastical & civil, chged upon or payable out of the sd premes hby grted, & to all rts of way & easemts (if any) affectg the same; *Covt by A. agst incumbces*, p. 406 (a). IN WRITS, &c.

LXXIII.

PREC.
LXXIII.
—

CONVEYANCE *by the* ECCLESIASTICAL COMMISSIONERS of the REVERSION of LANDS and TITHE RENT- CHARGE on other lands EXPECTANT on a LEASE for LIVES (b).

Recitals.
Title to
reversion.
Lease for
lives.
Reversion
vested in
Ecclesias-
tical Com-
missioners.

PARTIES, The Ecclesiastical Commrs for England, 1; A. & B., *the holders of the lease for lives*, 2; C., *pchaser*, 3. *WHAS* the pces of land, tithe rent-chge or rent-chges, & hds hinafter mentd were formerly pt of the possons of the Archbishop [Bishop] of — in rt of his See; *Recite lease for lives of lands & tithes on other lands*; AND *WHAS* by virtue of the sevl Acts of Parliamt relatg to the sd Ecclesiastical Commrs, & of an Order of her Majesty in Council, dated, &c., & duly published in the London Gazette on the — day of —, ratifying a scheme of the sd Ecclesiastical Commrs thrin recited or reld to, the revon of the sd pces of land, tithe rent-chge, & premes, comprd in the sd lease of, &c., & the rent reserved by the same lease became vested in

(a) See p. 399, note. Incumbents selling under the above Acts do not usually give covenants for title.

(b) See the Acts referred to in 2 Dav. Prec., pt. 1, p. 460, note; and Phillimore on Ecclesiastical Law, pp. 1658 *et seq.*

the sd Ecclesiastical Commrs for the pposes of the sd Acts :
 AND WHAS the sd Commrs, in psuance of the sd Acts of
 Parliamt, prepared & laid before her Majesty in Council
 a scheme dated, &c., & thby recommended & proposed, &c.,
recite scheme authorisg the Commrs to dispose of the estes of
the See with the consent of the respive holders ; AND WHAS the
 sd last-mentd scheme was by an Order of her Majesty in
 Council dated, &c., & published in the London Gazette of,
 &c., duly ratified & made effectual in law ; AND WHAS the sd
 Ecclesiastical Commrs, in psuance of their sd Acts, & the
 sd recited scheme & Order in Council, dated resply, &c.,
 have with the consent (hby testified) of the sd A. & B.,
 agrd with the sd C. for the sale to him of the revon, este,
 & intt of the sd Commrs in the sd lands, tithe rent-chge, &
 premes comprd in or subjt to the sd lease, subjt as hinafter
 mentd, for the sum of £——, being the conson wch upon
 due calculon & inquiry has appeared to the sd Commrs to
 be just & reasble : NOW THIS INDRE WITNETH that
 in psuance of the sd agrmt, & in conson of the sum of
 £——, now pd by the sd C. to the acct of the Ecclesiastical
 Commrs at the Bank of England, as directed by the sd
 Commrs in that behalf (the rect of wch sd sum is intd to be
 acknowledged by a mem endorsed on these psnts & the paymt
 whof the sd Commrs do also hby acknowe), They, the sd
 Ecclesiastical Commrs for England, in psuance of the sd
 Order in Council of the —— day of ——, & of every or any
 other power or authority enablg them in this behalf, & as
 & accdg to their revon, este, & intt, & with the consent (hby
 testified) of the sd A. & B. as the psns in whom the sd lease
 is now legally vested, do hby grt unto the sd C., ALL THAT
 the revon in fee simple expectant upon the determinon
 of the hinbfe recited lease & all other the este & intt (if
 any) of the sd Ecclesiastical Commrs of & in, 1st, ALL THOSE
 pces or pcels of land, &c., & 2ndly, ALL that or those the
 sd tithe commuton rent-chge or rent-chges, amtg to £——
 p.a., arisg or payable in respt of the lands in the parish
 of ——, in the coy of ——, wch are parlarly mentd or
 descd in the schdle hto, but variable accdg to the provons
 of the Acts, for the commuton of tithes, togr with all powers,
 rts, & remedies, for the recovery of such rent-chge or rent-

PRBO.
LXXIII.

Scheme.

Confirma-
tion of
scheme.Contract
for sale.Wit-
nesseth.

Grant.

Parcels.

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LXXIII.
—
Haben-
dum.

chges : *Habendum to C. in fee*, p. 395, SUBJT to all rts of way & other easemts, & subjt to & chged with all tithes or rent-chges payable in lieu thof, & all rates, taxes, chges, & outgoings whatsr by law affectg the same resply : *Covt by Ecclesiastical Commrs agst incumbces*, see p. 560, note. IN WITS, &c.

LXXIV.

PREC.
LXXIV.
—

**ASSIGNMENT of CHARGE in respect of REDEEMED
LAND TAX (a).**

Recitals.
Certificate
of redemp-
tion.

PARTIES, A., *vendor*, 1; B., *pchaser*, 2. *WHAS* by a certfe bearg date, &c., under the respive hands & seals of two of the Commrs appted for the pposes of the Act 42 Geo. 3, c. 116, the sd Commrs certified that they had agrd with X. for the redmon by him of £—— land tax, being the land tax chged upon a messe, &c., assessed in the land tax assessmt of the sd parish as thrin mentd (wch premes were held by the sd X. as benefl lessee for a certn term of yrs thrin) & the conson for such pchase was stated by an endorsemt on the sd certfe to be the sum of £—— : *AND WHAS* the sd sum of £—— was duly pd by the sd X. in psuance of the sd contract as appears by the certfe of the Deputy Recr-Genl of the coy of —— endorsed on the sd certfe, & the sd certfe was duly registd psuant to the dirons of the sd Act, & the sd premes thrupon became wholly freed & exonerated from the land tax & chgeable with the sum of £——, being the amt of the moys pd by the sd X. as the conson for the redmon of the sd land tax, & with the paymt of the yrly sum of £——, being the amt of the land tax redeemed, by way of intt thron for the benefit of the sd X., his exs, ads, & assns : *Recite devolon of chge in respt of redeemed land tax to A.*; *AND WHAS* the sd A. has agrd with the sd B. for the absolute sale to him of the sd sum of £—— chgeable on the sd messe & premes togr with the sd yrly sum of £——, payable by way of intt thron as afsd & all benefit

Agree-
ment.

As to the
redemption
of land
tax.

(a) The redemption of the land tax in the case in the text was effected under 42 Geo. 3, c. 116. Now it is effected under 53 Geo. 3, c. 123; see Bourdin on Land Tax.

under the sd recited contract for the sum of £——: NOW
 THIS INDRE WITNETH that in psuance, &c., & in conson,
 &c. (the rect, &c.) the sd A., as benefl owner, doth hby grt &
 assn unto the sd B. ALL THAT the sd sum of £—— with wch
 the sd messe & premes became chgeable for the benefit of the
 sd X., his exs, ads, & assns as hinbfe is mentd & also the sd
 yrly sum of £—— payable by way of intt for the sd sum of
 £—— as afd & all future paymts thof togr with the sd
 recited contract for redmon of the sd land tax & the full
 benefit thof To hold the same unto the sd B., his exs, ads, &
 assns. IN WITS, &c.

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LXXIV.

Assign-
ment.

LXXV.

ASSIGNMENT of the GOODWILL and PLANT of a BUSINESS
 by PARTNERS, and of LEASEHOLDS vested in one
 PARTNER in TRUST for the FIRM. COVENANTS by
 VENDORS NOT to CARRY ON BUSINESS (b), and by the
 PURCHASER to pay a SHARE of the GROSS RECEIPTS
 during a limited time to the VENDORS.

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LXXV.

PARTIES, A. & B., vendors (hinafter called the vendors), 1;
 C., pchaser (hinafter called the pchaser), 2. *Recite lease to A.*,
 p. 357: AND WHAS the vendors have for some time past carried
 on the business of —— in the sd messe & premes comprd in
 the sd lease as coptners, & the sd messe & premes are ptnp
 ppty, although no formal assnmt or declon of trust thof has
 been exted by the sd A.: AND WHAS the vendors are also entled
 to certn fixed & movable machy & plant, utensils, materials
 for manufacture, manufactured goods, stk-in-trade, chattels,
 & fixtures, used in their sd business [wch are specified in the
 first schdle hto, or, in an inventory signed by the sd pties] &
 are also entled to certn book debts [the parlars whof are
 specified in the second schdle hto, or, “in the books of acct of
 the sd business”] & have also entd into or are entled to the

Recitals.

Business.

Title to
plant, &c.

(b) As to covenants of this nature, see p. 30, note, and Lindley on Partnership, p. 488 et seq., and cases there referred to.

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LXXV.
—

Shares in
business.

Contract.

Wit-
nesseth.
Assign-
ment of
leaseholds.

Further
witnesseth.

Assign-
ment of
goodwill,
&c. (b).

As to
stamp duty
on sale of
goodwill.

benefit of certn contracts & orders [wch are mentd in the third schdle hto, *or*, "appear in the books of the sd business"] for the supply of goods manufactured or sold by them; [AND WHAS the vendors are entled to the sd business & ptnp ppty in the shares follg, namely, the sd A. to three eql fourth pts thof, & the sd B. to the remaing fourth pt thof]: AND WHAS the vendors have agrd with the pchaser for the sale to him of the (a) goodwill of the sd business, togr with the sd messe, machy, plant, utensils, materials for manufacture, manufactured goods, stk-in-trade, chattels, fixtures, & book debts, & the benefit of the sd contracts & orders, for the sum of £——, & such share of the gross earngs & rects in respt of the sd business as is hinafter covtd to be pd by the pchaser: AND WHAS it has been also agrd that the assnmt to be exted for the ppose of carrying out the sd sale shl contain the covts & provons hinafter expd: NOW THIS INDRE WITNETH, that in psuance, &c., *conson* (the rect, &c.), & of the covt by the pchaser hinafter contd, the vendors as benefl owners, accdg to the respive estes & intts, legal or equitable, to wch they are resply entled in the sd leasehd premes as hinfte recited, & all other, if any, their respive estes or intts thrin, do resply hby assn unto the pchaser, *complete the assnment of the leasehds*, "& the fixed machy & fixtures in & upon the sd premes," & *habendum as in Precedent VII.*: AND THIS INDRE ALSO WITNETH, &c., they, the vendors, as benefl owners, accdg to the respive estes & intts to wch they are resply entled as hinfte appears, & all other, if any, their respive estes or intts thrin, do resply hby assn unto the pchaser, ALL THAT the goodwill, intt, & cannon of them, the vendors, & each of them,

(a) As to goodwill, see p. 333, note (c).

(b) Goodwill is "property" within the Stamp Act (*Potter v. Commissioners*, 10 Exch. 147); and not being "goods" within the exception in the Stamp Act, 1891, referred to above, p. 334, note, the assignment thereof (if there is no preliminary contract so stamped) is chargeable with *ad valorem* duty as a conveyance; and if the purchaser takes upon himself and indemnifies the vendor against the debts, additional duty would be payable on the amount of the debts as part of the consideration under s. 57 of the Act of 1891. A mere contract for the sale of a goodwill on certain conditions precedent being fulfilled was not chargeable as a transfer (*Commissioners, &c. v. Angus*, 23 Q. B. D. 579); but now, if there is a preliminary contract, the *ad valorem* duty is, under s. 59 of the Act of 1891, imposed on the contract. As the important matter as regards the goodwill

of, in, & concerng the sd business of —, & also all the sd movable machy, plant, utensils, materials for manufacture, manufactured goods, stk-in-trade, chattels, & book debts, & also their respive intts in & under the sd contracts & orders, *Power of atty*, p. 426 (c): To HOLD the same UNTO the pchaser, his exs, ads, & assns, absolutely: *Cort by the pchaser with the vendors*, their exs, ads, & assns, & septely with each of them, his exs, ads, & assns, that he, the pchaser, will carry on (e) the business of — in the sd messe & premes first hinfte assned for & during the term of — yrs from the date of these psnts, if he, the pchaser, & eir of them, the vendors, shl so long live, & further will pay to the vendors, or the survor of them, for & in respt of each of the successive yrs endg on the — day of —, of the sd term of — yrs, if the pchaser, & also the vendors, or one of them, shl be livg at the end of each respive yr, one eql — pt of the gross earngs & rects in respt of the sd business, witht any dedon whatsr except the rent payable under the sd indre of lease, such one eql — pt to be pd on or bfe the — day of — next after the end of the yr in respt of wch it shl become due as afsd: *PROVD ALWAYS* & it is hby agrd & decld that in case the sd gross earngs & rects in respt of the sd business, witht any dedon save as afsd, in any yr of the sd last mentd term, shl be less than the sum of £—, then the pchaser shl not be required to make any paymt in respt of such yr: *It & sevl*

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—

Covenant
by C. to
pay share
of gross
receipts
(d).

Proviso in
case of
gross
receipts
falling off.

Covenant

consists of the vendor's covenants, it was formerly the practice to save the duty on the value of the goodwill (where material) by omitting it from the assignment and apportioning the purchase-money, leaving the matter to rest on the preliminary contract and the covenants (if any) in the assignment. This expedient, however, cannot now be had recourse to, and the only way of escaping payment of the duty is to dispense with the contract, the purchaser taking merely a receipt for the purchase-money and a deed of covenants (if required); care being taken that the receipt and accompanying deed do not contain any recitals or statement which might operate in law as a transfer or contract so as to be chargeable. See p. 531, note. Query, however, whether, if the goodwill attaches to the land, the increase in the value of the land which is attributable to the goodwill, can be severed for the purpose of the conveyance; see *Commissioners of Inland Revenue v. Angus*, per Lindley, L.J., 23 Q. B. D. 594, 597.

(c) As to making this power irrevocable, see p. 180, note.

(d) See the Partnership Act, 1890 (53 & 54 Vict. c. 39), s. 2 (2), (3) (e), s. 3.

(e) See *McIntyre v. Belcher*, 14 C. B. N. S. 654.

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—
not to
revoke
powers.

Not to
carry on
trade (a).

To intro-
duce pur-
chaser to
customers.

Vendors to
have access
to books.

Purchaser
to in-

covts by the vendors that they, the vendors, will not, nor will eir of them, or the exs or ads of eir of them, revoke any of the powers or authorities hinfte given to the pchaser, his exs, ads, or assns, or rece or rele any of the debts hby assned, or rece any moy or goods wch may become receivable under any of the contracts or orders, the benefit whof is hinfte assned, or rele any of such contracts or orders: AND FURTHER, that they, the vendors, will not, nor will eir of them, nor will the wife or widow of eir of them (b), at any time or times hrafter [during the term of — yrs from the date of these psnts], eir alone or jtly, or in ptnp with any other pson or psons whomsr, directly or indirectly, eir by themselves or himself, or as agents or agent or orwise, carry on, manage, or be concerned, engaged, or intted in the business of —, within — miles [measured along the highway] from — afd [in any pt of the United Kingdom] [& will not authorise their or his name, or the name of the sd firm of —, to be used in any way for the ppose of any such business in any pt of the United Kingdom by any pson or psons other than the pchaser, his exs, ads, & assns (c)]: [AND FURTHER, that the sd B. will, at all reasble times durg the space of — months from the date of these psnts, in case he shl so long live, at the reqt & at the expse of the pchaser [accompany him &] introduce him to the customers, agents, ppals, & correspondents of the vendors in their sd business, & use his utmost reasble endeavours to secure to the pchaser the full benefit & advantage of the connon of them, the vendors, in the sd business]: [PROVD ALWAYS that the sd B. shl not be bound to go more than — miles from — afd, or to attend psonally at the offices of the sd business for the pposes last afd]: [*If the outstandg book debts are retained by the vendors the follg clause may be inserted:* PROVD ALWAYS, that the vendors, their exs or ads, shl be entled to use the offices of the business, & to have access thto, & to the books & accts thof, so long & to such extent as may be necy for gettg in the outstandg book debts due & owg to them, & for windg up their business genlly:] *Covt by the pchaser*

(a) Compare bond for this purpose, p. 219.

(b) *Smith v. Hancock*, [1894] 2 Ch. 377.

(c) As to the right of the purchaser to use the vendor's name, see *Levy v. Walker*, 10 Ch. D. 436; *Thynne v. Shove*, 45 Ch. D. 577.

with vendors, & with each of them, for indemnity agst rent & costs of lease, p. 419: AND that the pchaser, his hrs, exs, or ads, will at all times keep the vendors, & each of them, & their respive hrs, exs, & ads, indemnified in respt of the sd contracts or orders, the benefit whof is hby assned, & agst all pcdgs, costs, damages, claims, demands, & liability by reason of the non-pformce or non-exon of the sd sevl contracts or orders: [AND THE pchaser doth hby bind himself to the vendors resply & their respive exs & ads in the sum of £—— as ascertained & liquidated damages that, in carrying on the sd business, the pchaser, his exs or ads, or his firm or his or their assns, will not trade in or make use of the names of the vendors or eir of them, or the name of their sd firm, or let any of such names appear on any invoice, labels, or trade-marks, or in any other way connected with the sd business: PROVD ALWAYS that the pchaser, his exs or ads, &c., shl be at liberty at all times hrafter & for all pposes connected with the sd business, to use & employ after his or their own name or names the words “succors to ——,” & for the period of twelve calr months from the date of these psnts to retain the name of the sd firm of —— on the labels as the same now appears.] IN WITS, &c. (d).

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demnify
vendors
against
rent, &c.,
and
breaches of
contract.
Covenant
not to use
names of
vendors.

[*The Schdles.*]

LXXVI.

CONVEYANCE *by a SURVIVING PARTNER and EXECUTORS and DEVISEES IN TRUST of a deceased partner of FREEHOLD and LEASEHOLD BUILDINGS, MACHINERY, and fixed PLANT, in connection with the sale of a BUSINESS including TRADE MARKS (e), as a GOING CONCERN to a LIMITED COMPANY who assume the DEBTS AND*

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(d) For the protection of the purchaser, notice of the transfer should be given to the parties to the contracts and orders, and to the debtors whose debts are assigned.

(e) As to trade-marks, see p. 332, note.

PRINC.
LXXVI.
—

LIABILITIES. THE LEGAL ESTATE *in PART of the PRO-*
PERTY being in ONE of the PARTNERS.

Recitals.
Business
carried on.
Title to
business
premises
and assets.

Formation
of com-
pany.

Agreement
for sale.

Apportion-
ment of
purchase-
money for
stamp duty
(a).

As to form
of convey-
ance.

*PARTIES, A., continuing ptner, 1; B. & C., exs & devisees in trust of deced ptner, 2; The — Co (hinafter called the Co), 3. WHAS X. late of — deced, for some time prior to his dece carried on the business of — at — in ptnp with the sd A., under the firm of — : Recite will of X., death & probate, p. 365: AND WHAS the sd business has been carried on upon certn messes, bldgs, & land ptly of freehd & ptly of leasehd tenure, the parlars whof appear from the recitals next hinafter contd, & the sd ptnp was also entled to certn fixed & movable machy, plant, & effects employed in or for the pposes of the sd business & to certn trade-marks the registered nos. whof are — : Recitals as to titles to freehds & leasehds; AND WHAS the Co was formed & registered as a Co limd by shares in the month of — for the ppose (among other things) of acquirg & carrying on & workg the sd business; AND WHAS the sd A. with the concurrence of the sd B. & C. as exs & trees of the will of the sd X. lately agrd with the Co for the sale to them of the sd business & the goodwill & cannon thof as from the 1st day of January, 18—, & the sd freehd & leasehd ppties & fixed & movable machy & plant & trade-marks, & the stk-in-trade, book debts & effects of the sd business as the same stood on the 1st day of January, 18—, subjt to the debts & liabilities of the sd business as the same stood at the same date, for the sum of £— being the estimated value thof, as appearg from the balce-sheet of the sd business made up to the — day of — : AND WHAS it was agrd that for the ppose of these psnts & the *ad valorem* stamp duty payable in respt of the convce & assnmt hby made or wch may be payable in respt of any further*

(a) If there is a preliminary contract the *ad valorem* duty is now chargeable on the contract *quoad* the goodwill, though not as to the land, which must be conveyed by deed, and the price of the chattels passing by delivery is not chargeable (see the Stamp Act, 1891, s. 59, and above, p. 586, note); but the recital as to the apportionment of the purchase-money is not inappropriate in that case, since if the goodwill is assigned by deed, the *ad valorem* stamp on the contract may, by the last-mentioned enactment, be transferred to the conveyance. A separate consideration should be stated for the trade-marks, as there must be a registered stamped assignment. If there is no preliminary contract, and it is desired to save the stamp duty on the value of the goodwill, it may be better to omit the recital of the contract,

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LXXVI.
—

convey or transfer to be made for effectuating the sale of the said business & premises, the said total purchase-money & conson for the said sale shall be apportioned as follows (that is to say), the sum of £——, being the estimated value of the said freehold & leasehold properties & such part of the said machinery & plant as is affixed to the freehold thereof respectively, & is not capable of passing by delivery, shall be taken & treated as the value of such freehold & leasehold properties & fixed machinery & plant, the sum of £—— shall be treated as the value of the said trade-marks, & the sum of £——, being the residue of the said sum of £——, together with the adoption & payment by the Company of the debts & liabilities of the said business, shall be taken & treated as the conson for the transfer to the Company of the goodwill & all the remaining assets of the said business : [AND WHEREAS it has been agreed that such covenants & agreements shall be made & entered into in relation to the premises as are hereinafter expressed :] NOW THIS INDRE WITNEETH that in pursuance, &c., conson, &c., the apportioned conson for the freeholds & leaseholds & fixed machinery & plant (the rect, &c.), the said A. conveying as beneficial owner, in respect of his beneficial estate & interest in the said freehold premises hereby assured & conveying as trustee in respect of the legal estate in certain portions thereof which is vested in him as hereinbefore appears, doth hereby grant & assign, & the said B. & C., as trustees as well in respect of the beneficial estate & interest in the same premises which is vested in them as executors or devisees in trust of the will of the said X. as in respect of the legal estate in certain portions thereof which is vested in them as such executors or devisees in trust do respectively hereby grant & assign unto the Company *Freehold & leasehold parcels*, p. 377, & all other (if any) the holds of freehold or leasehold tenure situate in ——— aforesaid, belonging to or used for the purposes of the said business (b),

Agreement
as to cove-
nants.

Wit-
nesseth.

Grant.

lest it should be held to amount to a contract; a simple receipt (without more) being taken for the value of the goodwill and chattels; and a recital being substituted that "As part of an arrangement for the sale to the Company of the said business & the assets thereof, the said A., &c., has agreed with the Company for the sale to them of the said freehold & leasehold properties & fixed machinery & plant for the sum of £——, being the estimated value," &c. Any covenants between the parties connected with the sale of the goodwill, &c., may be contained in the same, or perhaps better in a separate deed.

(b) The mention of the fixtures does not render the conveyance a bill of sale. *Re Brooke*, [1894] 2 Ch. 600.

PREC.
LXXVI.
—

Togr with all machy, erections, fixtures, & plant, affixed to the freehd of the same respive freehd & leasehd premes hby grted & assned resply & not capable of passg by delivery, & wch are the ppty of the sd respive pties hto of the first & second pts or any of them, *Habendum to the Co as to the freehds in fee & as to the leasehds for the residue of the term or terms & subjt to rents & corts of leases*, p. 397; *Cort by the Co with A. & also septely with B. & C. for paymt of rents & pformce of corts & leases*, p. 419. IN WITS, &c.

LXXVII.

PREC.
LXXVII.
—

TRANSFER *by* ENDORSEMENT *of* CONTRACT *for* PURCHASE *of* real estate PENDING INVESTIGATION *of* title *at an increased price.*

Recitals.

MEM OF AGRMT made the — day of —. Betn A., of, &c., of the one pt & B., of, &c. (hinafter called the pchaser), of the other pt. WHAS since the date of the within written agrmt the abstract of title to the within mentd ppty has been delivered to Messrs. —, the solors of the sd A., who have taken the opinion of counsel upon the title & forwarded requons thron to Messrs. —, the solors for the within named vendors.

Now it is hby agrd as follows:—

Transfer.

1. IN CONSON of the paymt by the pchaser to the sd A. of the sum of £—, *the increase in the price* (the rect, &c.), the sd A. hby assns to the pchasers all the equitable este & intt of the sd A. in the within mentd ppty by virtue of the within written agrmt togr with the benefit of the sd agrmt, & togr also with all his rt, title & intt to & in the within mentd deposit moy of £—.

Costs.

2. On the exon of these psnts the pchaser shl also pay to the sd A. (1) The within mentd deposit moy of £—, (2) The chges of Messrs. —, *land agents*, who acted for the sd A. in the mre of the pchase amtg to the sum of £—, & (3) The legal costs & expses incurred by the sd A. to his sd solors in the mre of the sd pchase [wch are agrd up to the psnt time

at the sum of £——, includg the costs of these psnts], & any further costs wch the sd A. or his reprives may incur or be put to in carrying out the pchase, & enablg the pchaser to complete the same or orwise arisg out of these psnts.

PREC.
LXXVII.
—

3. THE sd A. will at the same time hand to the solors of the pchaser the abstract of title, draft, requons, and opinion of counsel, now in posson of the sd A., & also a copy of the correspce wch has taken place betn the sd Messrs. — & the within mentd solors of the vendors.

Abstract,
&c.

4. THE sd A., or in the event of his death, his repves will & shl, if required by the pchaser, & at his expse, join in the convces or assurances of the ppty to him, but witht enterg into any covt (express or implied) except the usual trees' covt agst incumbces, & will & shl at the like expse exte & do any instrumts & acts wch may reasbly be required for enablg the pchaser to complete the sd pchase & obtain the full benefit of this agrmt.

Convey-
ance.

5. THE pchasers will pform & carry out the within written agrmt accdg to the tenor thof, or if they shd make default in so doing, or shd rtfully refuse to carry out the same, they will indemnify the sd A. agst all actions, claims, demands, & expses, wch he may incur or sustain by reason of his having entered into the sd agrmt. As wits the hands of the sd pties.

Indemnity.

LXXVIII.

ASSIGNMENT of BOND debt.

PARTIES, A., vendor, 1 ; B., pchaser, 2. Recite bond to secure paymt of £—— & intt to A., p. 360 ; AND WHAS the sd ppal sum of £——, togr with intt thron as from the —— day of —— now last past remains due to the sd A. on the secy of the sd bond ; AND WHAS the sd A. has agrd with the sd B. to sell to him for the sum of £—— the sd bond & the sd ppal sum of £——, & the intt now due & all intt henceforth to become due on the same : NOW THIS INDRE WITNETH, conson (the rect, &c.), the sd A. as benefl owner both hby assn unto

PREC.
LXXVIII.
—

Recitals.
That debt
is owing.

Agreement

Wit-
nesseth.
Assign-

PREC.
LXXVIII.
—
ment of
bond.
Haben-
dum.

the sd B., ALL THAT, *bond debt*, see p. 385 (a), To HOLD the same UNTO the sd B., his exs, ads, & assns absolutely. IN WITS, &c.

LXXIX.

PREC.
LXXIX.
—

ASSIGNMENT of a POLICY of LIFE ASSURANCE (b).

Assign-
ment.

PARTIES, A., *vendor*, 1; B., *pchaser*, 2: WITNETH that in conson of the sum of £——, now pd by the sd B. to the sd A. for the pchase of the policy & moys hby assned (the rect, &c.), the sd A. as *benefi owner* doth hby assn unto the sd B., *pcls*, p. 385, To HOLD the same UNTO the sd B., his exs, ads, & assns absolutely; [*Covts by A. with B. not to vitiate policy, to pay increased premiums if required, & to give certn notices*, p. 423](c). IN WITS, &c.

LXXX.

PREC.
LXXX.
—

ASSIGNMENT of LEGACY CHARGED on REAL ESTATE on the PURCHASE thereof by the TENANT for LIFE, so as to KEEP the CHARGE ALIVE for his benefit, ONE of the LEGATEES being a MARRIED WOMAN (d).

Recitals.

PARTIES, A. “& B., his wife, formerly C., spinster,” & D., *legatees*, 1; E., *tenant for life*, 2. *Recital of will chging real*

(a) As to the omission of the power of attorney, see p. 111, note. Enquiry should be made before completion from the debtor as to the state of accounts between him and the vendor, and whether he has notice of any charges or assignment, and after completion notice of the assignment must be given to the debtor.

(b) As to the law of policies, see Goodeve, P. P. 151 *et seq.*

Stamps.

(c) The insertion of these covenants depends on the arrangements between the parties. In practice, the two first of such covenants, or some modification thereof, are generally inserted. A written notice of the assignment must be given to the Assurance Company, at their principal place of business, pursuant to the “Policies of Assurance Act, 1867,” 30 & 31 Vict. c. 144. As to the necessity for stamping the assignment, see the Stamp Act, 1891, s. 118, which makes it expedient to stamp the deed immediately; see 33 Sol. J. 3.

(d) If the married woman was married or her title accrued since 1882 (as to which see p. 490, note), the concurrence of her husband and her

este with legacy of £—— & intt to be raised by sale or mtge, & subj't thto, devisg este to E. for life with remrs over; Death of testor & probate, p. 365; & showg that the legacy had become raisable, & was vested in B. & D. in eql shares; Paymt of legacy or succon duty or of este duty under the Finance Act, 1894 (e);

AND WHAS all intt wch has accrued due upon the sd legacy of £—— up to the date of these psnts has been pd & satisfied;

AND WHAS the sd pties hto of the first pt are desirous of havg the sd legacy raised for their benefit accdg to the provons of the sd will, & the sd E. has agrd with them for the pchase of the sd legacy, & of the intt henceforth to become due thron, for the sum of £——, to the intent that the sd legacy may become pt of his psonal este, & exist as a distinct chge on the sd hds chged thwith: NOW THIS INDRE WITNETH that in psuance of the sd agrmt & in conson of the sum of £——, now pd by the sd E. to the sd A. & B., his wife, & of the like sum of £—— pd by the sd E. to the sd D. (the rect, &c.), the sd A. & B. as benefl owners of one moiety of the ppty hby assned do resply hby assn, & the sd D. as benefl owner of the other moiety thof, doth hby assn unto the sd E., ALL THAT the sd legacy or sum of £—— by the sd will of the sd —— chged on the sd este & hds situate at, &c., as afsd, & all intt henceforth to become due for the same, & the full benefit of the sd trust for the raisg & paymt thof, & of all powers & remedies for the recovery thof; To HOLD the same UNTO the sd E., his exs, ads, & assns absolutely; AND the sd E. doth hby declare that the sd legacy or sum of £—— shl not merge in the freehd or inhance of the sd hds chged thwith as afsd, but shl exist septely as pt of the psonal este of the sd E., for the benefit of him, his exs, ads, & assns. IN WITS, &c. (f).

PREO.
LXXX.
—

Interest
paid.

Contract.

Wit-
nesseth.

Assign-
ment.
Parcels.

Haben-
dum.

Declara-
tion that
legacy shall
not merge.

acknowledgment of the deed will be unnecessary; otherwise it must be acknowledged, see *Franks v. Bollans*, L. R. 3 Ch. 717; *Michelmores v. Mudge*, 2 Gif. 183; *Williams v. Cooke*, 4 Gif. 343, distinguished in *Re Newton*, 23 Ch. D. 181. In any case her implied covenants bind her separate estate, see pp. 491, 492, note.

(e) If the testator died before 1st July, 1888, legacy duty will be payable; if on or after that day, succession duty; see the Customs, &c., Act, 1888, 51 & 52 Vict. c. 8, s. 21 (2). Goschen's estate duty may also be chargeable under the Customs, &c., Act, 1889, 52 Vict. c. 7, s. 6. If the legatee was a child or issue of the testator, and estate duty under the Act of 1894 was payable, neither legacy, succession, nor Goschen's estate duty is payable.

(f) Notice should be given to the trustees of the will.

LXXXI.

PREC.
LXXXI.
—

ASSIGNMENT of the CONTINGENT REVERSION of a Stock
LEGACY to a Purchaser (a). COVENANTS as to ASSUR-
ANCE on Vendor's LIFE, and by PURCHASER to pay
LEGACY or SUCCESSION DUTY. VARIATIONS where the
FUND is in COURT.

Recitals.	<p><i>PARTIES</i>, A., <i>vendor</i>, 1 ; B., <i>pchaser</i>, 2. <i>WHAS</i> under the will of X., deced, dated, &c., & proved, &c., the sd A. is entled, contingently on his survivg M., of, &c., & subjt to the life intt of the sd M. thrin, to the sum of £—— 2½ p.c. Consold Stk, now standg in the names of P. & Q., the trees of the sd will, wch has been appropriated to answer a legacy of £—— thby bequed [if the fund is in ct say, “ now standg in Court to the credit of, state the acct, representg a legacy,” &c.](b) ; AND <i>WHAS</i> the sd B. has contracted with the sd A. for the absolute pchase of the revon of the sd sum of £—— Stk to wch the sd A. is entled, subjt to the life intt of the sd M. thrin, & contingently on his survivg her as afsd, & subjt to the duties, if any (c), wch will become payable thron in that event, for the sum of £—— ; AND <i>WHAS</i> upon the treaty for the sd pchase it was agrd that these psnts shd contn such covts & provons as are hinafter expd ; NOW THIS INDRE WITNETH that in psuance of the sd agrmt, <i>conson</i> (the rect, &c.), the sd A., as <i>benefl owner</i> doth hby assn unto the sd B., ALL THAT the sd sum of £—— Stk, to wch under the sd will of the sd X. the sd A. is entled in revon expectant upon the dece of the sd M., & contingently on his survivg her, as <i>hinbfe mentd</i> : AND ALL & every the stks,</p>
Title.	
Contract.	
Wit- nesseth.	
Assign- ment.	
Parcels.	

(a) As to sales of reversions, see p. 508, note.

(b) If there has been a previous assignment, and a stop order has been obtained, as to which see Seton on Decrees, 417 ; R. S. C., Order XLVI., r. 4, add, “ AND *WHAS* by an order made in the sd action or ‘mre,’ on the applon of —— on the —— day of ——, it was ordered that no pt of the sd sum of £—— stk shd be sold, transferred or dealt with witht notice to the sd ——.”

(c) As to the duties, see note, p. 421 ; see also note at end of volume. Settlement estate duty under the 5th section of the Finance Act, 1894, may have been payable on the death of X.

funds, secs, moys & ppty wch by means of any sale or change of investmt or orwise may from time to time represent the sd sum of £—— Stk, or any pt thof; AND ALL the divds, intt & income of the sd premes subjt to the life intt of the sd M. thrin, & the full benefit of the sd respive premes, & of all powers & remedies for the recovery & obtaing paymt & transfer thof; To HOLD the same UNTO the sd B., his exs, ads, & assns absolutely, SUBJT to the duties, if any, to become payable upon the dece of the sd M. in respt of the sd revy intt of the sd A. in the event of his survivg her; *Covts by A. with B.*, that the sd A., his exs, or ads will as often as the sd M. shl remove or change her place of abode, or in case of the death of the sd M., forthwith give notice thof in writg to the sd B., his exs, ads, or assns: *to enable B. to assure A.'s life*, p. 423: *to give certn notices*, p. 423: *If the fund is in ct, add*, AND THE sd A. doth hby empower the sd B., his exs, ads, or assns, at his or their own cost, to apply for & obtain an order in the sd cause, or, (mre), [dischgng the recited order of the —— day of ——, *the existg stop order, if any*, & in lieu thof to apply for & obtain an order] that no pt of the sd sum of £—— Stk shl be sold, transferred, or dealt with witht notice to the sd B., & upon such applon to use the name of the sd A. as concurrng in or consentg to the same: *Cort by B. to pay duty*, p. 422. In WITS, &c.

PREC.
LXXXI.
—

Haben-
dum.

Subject to
death
duties.

Covenants
by A. to
give notice
of death,
&c., of M.

Power to
obtain stop
order.

LXXXII.

DEED of Statutory ACKNOWLEDGMENT by a VENDOR for PRODUCTION of DEEDS and MUNIMENTS of TITLE to a PURCHASER. VARIATIONS for several VENDORS and for TRUSTEES or MORTGAGEES (d).

PREC.
LXXXII.
—

PARTIES, Vendor or Vendors, 1; *Pchaser or pchasers*, 2. *WHAS* by an indre bearg even date with & exted bfe these psnts, &

Recitals.

(d) See p. 413, note (b). The covenant for production was often taken by a separate deed, especially where it comprised documents which it might be desirable to keep off the title. But as requisitions as to documents prior to the commencement of the title are now precluded in almost every case by the contract or the Conv. Act, 1881, s. 3 (3), there is seldom any advantage

As to
taking
covenant
for produc-
tion by a
separate
deed.

PREC.
LXXXII.
—

Wit-
nesseth.

made betn, &c., in psuance of an agrmt for sale thrin mentd, certn — & hds situate in the parish of — & coy of —, have been conveyed to the use of the sd, *pchaser or pchasers, in fee simple* [unto the sd, *pchaser or pchasers*, for the residue of a term of — yrs created by an indre of lease dated, &c., & made, &c.]; *Recital introductory to cort for prodon*, p. 374; NOW THIS INDRE WITNETH that in psuance of the sd agrmt, & in conson of the premes, *statutory acknowemt & undertakg*, p. 418, form III.; [*for trees, or mtgees, statutory acknowemt omittg or qualifying the undertakg*]. IN WITS, &c.

[Schdle.].

LXXXIII.

PREC.
LXXXIII.
—

STATUTORY ACKNOWLEDGMENT *for* PRODUCTION, *where there are SEVERAL SETS of COVENANTING PARTIES,* *some of whom are TRUSTEES.*

Recitals.
Wit-
nesseth.

PARTIES, A., one cortg pty, 1; B. & C., trees, other cortg pties, 2; D., pchaser, 3. Recite conve of even date to D., see last precedent; Recital introductory to cort, p. 374; NOW THIS INDRE WITNETH that, in psuance of the sd agrmt & in conson of the premes, &c., *statutory acknowemt & undertakg by A. as to docs in first schdle, & acknowemt [& undertakg] by B. & C. as to docs in second schdle, see p. 418, form IV.* IN WITS, &c.

[Two Schdles.]

in taking the covenant by a separate instrument, except where it is to be entered into by third parties who cannot be made parties to the conveyance without extra expense; or where the insertion of the covenant in the conveyance would delay the completion of the sale, *e.g.*, where the deeds are delivered to the purchaser of another lot who is to give the covenant; or where the deeds may soon cease to affect the title, *e.g.*, where the vendor is a tenant for life, and the deeds relate to incumbrances on his life estate. The statutory acknowledgment and undertaking may be by writing not under seal, requiring only a 6d. agreement stamp, see p. 415, note, and Precedent LXXXIV., *infra*.

LXXXIV.**MEMORANDUM** *not under SEAL of ACKNOWLEDGMENT for production.*PREC.
LXXXIV.
—

I, A., of, &c., havg by an indre dated, &c., conveyed to B., of, &c., certn hds situate at, &c., do hby acknowe the rt of the sd B. to the prodon & delivery of copies of the docs mentd in the schdle hto (wch are now in my posson & relate as well to the hds conveyed to the sd B. as afsd as to other hds belongg to me) & hby undertake with the sd B. for the safe custody of the same docs. Dated this — day of —.

[Schdle.]

LXXXV.**COVENANT** *by PURCHASER to PRODUCE DEEDS to VENDOR, and INDEMNIFY him against LIABILITY under COVENANTS for production entered into by his TESTATOR (a).*PREC.
LXXXV.
—

PARTIES, A., *pchaser*, 1; B., *vendor*, 2. *Recite convce of even date by B. to A.* "of certn hds, &c., wch formed pt of the trust este vested in the sd B. as the tree of the will of C. of, &c., deced," *see Precedent LXXXI.*; AND WHAS the deeds & munimts specified in the schdle hto, wch relate to the hds comprd in the hinbfe recited indre, & wch were in the posson of the sd B. as tree or exor of the will of the sd C., have been delivered by the sd B. to the sd A. as he doth acknowe; AND WHAS the sd B., as tree or exor of the sd C. may be under liability in respt of divers deeds of covt entd into by the sd C. for the prodon & furnishg copies of, or orwise in relon to the sd deeds & munimts or some of them, & the sd A. has agrd to enter into such covt as is hinafter contd for indemnifyg the sd B. in respt of such liabilities; AND WHAS the deeds & munimts specified in the first pt of the schdle hto relate as well to the hds

Recitals.

Convey-
ance.Deeds de-
livered to
purchaser.Vendor
liable
under
covenants
to produce.Certain
deeds
relate to
other pro-
perty of
vendor.

(a) See p. 413, note.

PREC.
LXXXV.
—

Wit-
nesseth.

Covenant
to indem-
nify.

assured by the hinbfe recited indre as to other hds formg pt of the trust este under the sd will of the sd C., & the sd A. has agrd to give such acknowemt & undertakg [covt] as to the prodon & safe custody thof as is hinafter contd : NOW THIS INDRE WITNETH that, in psuance of the sd agrmt in this behalf & in conson of the premes, the sd A. doth hby for himself, his hrs, exs, ads, & assns, covt with the sd B., his hrs, exs, ads, & assns, that he the sd A., his hrs, exs, ads, or assns, will at all times duly observe & pform all the covts at any time entd into by the sd C. with any pson or psons for the prodon & furnishg copies of, or orwise in relon to, any of the deeds & munimts specified in the sd schdle hto, & will indemnify & keep indemnified the sd B., his hrs, exs, & ads, & the este of the sd testor from all pcdgs, claims, demands, costs, damages, expses, & liability whatsr, by reason or in respt of any such covts : *Acknowemt & undertakg by A. as to prodon to B. of the munimts in first pt of schdle, p. 418.* IN WITS, &c.

[Schdle in two pts.]

LXXXVI.

SUBSTITUTED deed of COVENANT for Production.

PREC.
LXXXVI.
—

Recitals.

Convey-
ance.

Covenant
by vendor
to produce.

Sale of
remaining
property,
and agree-
ment for
substituted
covenant.

PARTIES, A., B., & C., 1; D., 2; E., 3. *WHAS* by an indre dated, &c., & made betn the sd D. of the one pt & the sd E. of the other pt, for the consons thrin mentd, a certn messe or tenemt & hds situate at — in the coy of — were conveyed by the sd D. to the sd E., his hrs & assns : AND *WHAS* by the sd indre the sd D. covted with the sd E. to pduce & furnish copies of a certn deed of convce, dated, &c., & made, &c., in support of the title of the sd E. : AND *WHAS* the sd D. has recently sold the remaing portion of the hds & premes comprd in the sd deed of convce of, &c., to the sd A., B., & C., & the same deed of convce has been delivered over to the sd A., B., & C., upon the terms of their givg such acknmt & undertakg as is hinafter contd to the sd E., in substiton for & in exoneron of the liability existg under the sd covt of the sd

D. contd in the hinbfe recited indre for the prodon & furnishg
 copies & safe custody of the sd deed of convce : NOW THIS
 INDRE WITNETH that in conson of the premes, *acknowemt*
& undertakg by A., B., & C. to E., p. 418: AND THIS INDRE
 ALSO WITNETH that, in conson of the premes, the sd E.
 doth hby rele the sd D., his hrs, exs, & ads, from the sd covt
 contd in the sd indre of, &c., & from all liability thrunder, so
 far as relates to the sd deed of convce wch has been delivered
 to the sd A., B., & C., as afsd, but not further or orwise.
 IN WITS, &c. (a).

PREC.
 LXXXVI.

Wit-
 nesseth.
 Further
 witnesseth
 release of
 vendor.

(a) Such a deed as this would be unnecessary where the former covenants were in the form of the statutory acknowledgment and undertaking instead of the old form of express covenant, as the liability under the statutory form ceases *ipso facto* on the deeds being parted with; see p. 413, note.

COVENANTS, FORMAL PARTS OF.

Covenant
by one
with one.

Covenant
by two
jointly and
severally
(d).

Covenant
by more
than two
jointly and
severally
(d).

Covenant
by several
where each
covenants
for his own
acts only.

Covenant
by a firm.

Covenant
with two
jointly and
severally.

I. THE sd A. (a) hby covts with the sd B. (b) that (c), &c.

II. THE sd A. & B. hby [for themselves & their assns] covt, & each of them hby [for himself & his assns] covts septely with, &c.

III. THE sd A., B., C., & D., hby [for themselves & their assns], & every three & two of them hby [for themselves & their assns], covt, & every one of them hby [for himself & his assns], covts septely, &c.

IV. EACH of them the sd A., B., & C., hby so far as relates to the acts & defaults of himself & his own hrs, exs, & ads only, & not further or orwise, covts with, &c.

V. THE sd A. & Co do hby for themselves & the sevl ptners in their firm, jtly & sevly covt with, &c.

VI. THE sd A. hby [for himself & his assns] covts with the sd B. & C. [& their assns], & also septely with each of them [& his assns], that, &c.

(a) Where the burden of the covenant is intended to run with land or title deeds, insert here "for himself & his assns."

(b) Where the benefit of the covenant is run with the land, insert here "& his assns."

(c) Where several covenants follow each other they may run on as one sentence, each covenant being introduced with the words "& also," or by the words "first," "secondly," &c. It will generally be found more convenient to introduce each covenant by the word "that" rather than "to," except in very simple cases.

It is not necessary for a married woman to expressly bind her separate estate. See the Married Women's Property Act, 1893, *ante*, p. 491.

(d) See R. S. C., 1883, Order XVI., rr. 4 and 6. As to what amounts to a joint and what to a several covenant, see *White v. Tyndall*, 13 App. Ca. 263; and see Platt on Covenants; Elph. Interp., p. 434.

VII. THE sd A. hby [for himself & his assns] covts with the sd B., C., D., & E., & also septely with every three & two of them [& their assns], & also septely with every one of them [& his assns], that, &c.

Covenant
with three
or more
jointly and
severally.

VIII. THE sd A. hby, &c., covts with the sd B., C., D., & E., & every of them [their & every of their assns], jtly & sevly, that, &c.

The same.
Short form.

IX. THE sd A. hby, &c., covts with the sd B. & Co, & with the sevl ptners in their firm, jtly & sevly, that, &c.

Covenant
with a firm.

X. THE sd A., *pty of the one pt*, hby [for himself, & his assns], so far as the covts, agrmts, & provons hinafter contd are or ought to be pformed or observed by him & psons claiming under him, covts with the sd B. & C., *pties of the other pt* [their & each of their assns], jtly & sevly, & the sd B. & C. do hby [for themselves resply & their respive assns], jtly & sevly, so far as the covts, agrmts, & provons hinafter contd are or ought to be pformed or observed by them & psons claiming under them resply, covt with the sd A. [& his assns], in mner follg (that is to say) :—

Mutual
covenants
by two sets
of parties.

XI. EACH & every of them the sd pties hto of the 1st, 2nd, & 3rd pts hby [for himself, & his assns], so far, &c., *as above*, covts with the other pties hto [& their respive assns], jtly & sevly, & the sd pties hto of the 4th pt hby [for themselves resply & their respive assns], jtly & sevly, so far, &c., covt with the other pties hto & every of them [their & every of their assns], jtly & sevly, in mner follg (that is to say) :—

The same
by more
than two
sets of
parties.

XII. It is hby mutually covted & agrd by & betn the sd sevl pties hto, as follows :—

The same.
Short form.

XIII. THE sd — Co hby [for themselves & their assns] covt with the sd — Co [& their assns].

Covenant
between
two com-
panies.

XIV. THE sd A., B., & C. do hby jtly & sevly covt with the sd D., that they the sd A., B., & C., or their respive hrs, exs, or ads, or some or one of them, will on or bfe the — day of — pay to the sd D., his exs, ads, or assns, the sum of £—— witht intt in the meantime *or* “with intt thron in the meantime from the date of these psnts at — p.c. p.a.”

Joint and
several
covenants
by several
to pay a
sum of
money.

DECLARATIONS STATUTORY (a).

I.

DECLARATION *by* ATTESTING WITNESS *authenticating the Execution of a* POWER OF ATTORNEY *or* DEED *to operate in the* COLONIES *or elsewhere* ABROAD (b).

I., L., of, &c., *one of the attestg witses*, do solemnly & sincerely declare that I & also M., of, &c., *the other wits*, were psnt togr on the — day of — & did see K., of, &c., the constituent named in the power of atty [pty of the — pt to the deed] hrunto annexed, bearg date the — day of — & marked with the lre A., duly sign, seal, & as his act & deed deliver the sd power of atty [deed], & that the name or signature K. set & subscribed to the sd power of atty [deed] as the name of the pty extg the same is of the pper handwritg of the sd K., & that the name or signature L. set & subscribed to the sd power of atty [deed] as the name of one of the witses attestg the exon thof by the sd K. is the name or signature of me the declarant, & that the name or signature M. set & subscribed to the same power [deed] as the name of the other witses attestg the exon thof by the sd K. is of the pper handwritg of the sd M. AND I make this declon conscientiously believg the same to be true, & by virtue of the provons of the Statutory Declons Act, 1835.

DECLD at the City, *or*, “in the Borough” of —, this — day of —, bfe me [& I certify the same under my hand & the

As to
statutory
declara-
tions.

(a) See the Act 5 & 6 Wm. 4, c. 62; the Conv. Act, 1881, s. 68, supplying a short title; and the Interpretation Act, 1889, 52 & 53 Vict. c. 63, s. 21, as to the meaning of “Statutory Declaration.” As to the stamp, see the Stamp Act, 1891, 1st Schedule, tit. AFFIDAVIT and STATUTORY DECLARATION.

(b) See above, p. 189, note.

seal of office of mayoralty of the same City, *or*, "Borough" (c)].
X., Mayor of —, *or*, "Notary Public."

II.

VERIFICATION *by a Mayor or Notary Public of Declaration of Attesting Witness.*

TO ALL TO WHOM THESE PSNTS SHL COME, I, X., Mayor of the City, *or*, "Borough" of —, *or*, "Notary Public by Royal Authority duly admitted & sworn, of —, in the coy of —," in psuance of an Act of Parliamt made & passed in the fifth yr of the reign of his late Majesty King George the Second, intituled "An Act for the more easy recovery of Debts in his Majesty's Plantations & Colonies in America," & of the Statutory Declons Act, 1835, do hby certify that on the day of the date hrof psonally came & appeared bfe me L., the pson named in the declon hrunto annexed, being a pson well known & of good credit, & by declon wch the sd L. then made bfe me, did solemnly & sincerely declare & testify to be true the sevl mres & things mentd & contd in the sd annexed declon. 5 Geo. II. c. 7.

IN FAITH & TESTIMONY whof I, the sd Mayor, *or*, "Notary Public" have caused the seal of office of mayoralty of the City, *or*, "Borough" of — [my notarial seal of office], to be hrunto put, & to be affixed to the power of atty [deed] mentd in the sd declon hrunto annexed.

Dated in — the — day of —

X., Mayor of —, *or*, "Notary Public." (Seal.)

(c) The form in this bracket is stated to be sometimes used so as to render the verification in Precedent II. unnecessary.

III.

VERIFICATION *by a Notary Public in a British
Dependency of Signature of Magistrate or other
Official to Jurat of Affidavit.*

I, —, Notary Public, by royal authority duly admitted & sworn, residg & practisg in the town of — in —, do hby certify & attest that —, whose name & signature appears set & subscribed to the jurat at the foot of the foregoing affidavit of —, is the chief magistrate & one of her Majesty's Justices of the Peace in & for the sd town of —, *or as the case may be*, bfe whom the affidavit was duly sworn. All wch I attest.

<p>—————, Notary Public,</p>	{	<p>IN FAITH & TESTIMONY whof I, the sd Notary, have hrunto set my hand & affixed my notarial seal of office at — in — afsd this — day of —.</p>
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IV.

DECLARATION *as to Identity and Possession of PARCELS.*

I, A., of, &c., do solemnly & sincerely declare as follows:—

1. I AM — yrs of age, & have for a period of — yrs last past resided in the neighbourhood of —, & have for upwards of — yrs past [acted as surveyor & agent to, &] been well acquainted with a freehd & copyhd este known as —, situate in the parish of — afsd, a portion whof, comprisg sevl closes of land, &c. [delineated in the plan now pduced & shown to me marked A., & thrin coloured —, *or*, "descd in the schdle hto"], has been lately contracted to be sold to X., of, &c.

2. I verily believe, & have no doubt, that the sevl closes of land so contracted to be sold to the sd X. are pt of the land wch were comprd in, & conveyed to Y., of, &c., by an indre dated, &c., the descron in wch indre I have carefully read previously to makg this declon.

3. THE close or pcel of land nod — in the plan or tracg hrunto annexed, wch is a true & correct copy of a portion of the map annexed to a certn indre dated, &c., of land in the township of, &c., is the same plot or pcel of land as is desc'd in the schdle to an indre dated, &c., as follows, &c.

4. DURING the time I have known the sd este as afsd the sd sevl closes of land so contracted to be sold have been the ppty of or been in the posson of L., M., & N., successively, namely of the sd L., from the yr — to the yr —, &c. AND such respive psons have, durg such respive periods, as I verily believe [from my knowledge of the ppty & from havg acted as recer of the rents thof, & from an examinon wch I have lately made of the rental books thof & from havg lately gone over the ppty carefully & verified the descron contd in the sd schdle & plan], been in the full, free & undisturbed posson & enjoymt or rect of the rents & profits of such sevl closes of land & premes, with the appurts thof. AND I make, &c.

V.

DECLARATION *as to* PEDIGREE.

I, L., of, &c., do solemnly & sincerely declare as follows:—

1. I AM — yrs of age, & am one of the chn of the late A. of —, by B. his wife, formerly K., spinster, who, as I have been informed & believe, were married in the parish church of — on the — day of —. The sd A. & B. are the psons of those respive names in the marre certfe pduced & shown to me at the time of makg this declon & marked with the lre —.

2. I have always understood & believed that the sd A. had three chn & no more by the sd B., namely, two sons, named resply D. & E., & one daur, being myself.

3. THE sd D. was, as I have always understood, born at — in the kingdom of Italy on the — day of —. In the yr 18— he sailed for Australia in the ship — from Liverpool, since wch time no tidings of him have ever been

reced by any of his family, & I verily believe him to be dead, & that he died a bachelor & intestate.

4. I HAVE been informed & believe that the sd E. was born at — on the — day of —. He was married only once, namely, to F., formerly M. spinster, with whom he intermarried on the — day of — at the parish church of —, as I know from havg been psnt at the marre. The sd E. died on the — day of —. He is the pson of that name mentd in the three sevl certfes of baptism, marre & burial, now pduced & shown to me, & marked with the lres —, —, & —, resply. The sd F. is still livg & resides at —.

5. THERE was issue of the marre of the sd E. & F. one child only, named G. who was born on the — day of —, & died on the — day of —, at the age of — yrs, & witht havg been married. The sd G. is the pson of that name mentd in the certfes of baptism & burial now pduced & shown to me, & marked with the lres — & — resply.

6. I KNEW & was well acquainted with H., one of the trees of the settlemt made on the marre of the sd E. & F., who resided & died in the month of —, at —. The paper writg now pduced & shown to me marked with the lre — is a certfe of his burial.

7. I DEPOSE to the above facts from my own knowledge or family repute. AND I make, &c. (a).

(a) As to the desirability of a declaration as to pedigree being made by a member of the family, see Hubback on Succession, pt. 3, chap. 10; Taylor on Evidence, 564 *et seq.*

DECLARATIONS OF TRUST (b).

I.

DEED of DECLARATION of TRUST of UNDIVIDED SHARES of *purchased LANDS (c).*

THIS INDRE, &c. *Pties, A., pchaser & tree, 1; B., cestui* Parties.
que trust, 2. Recite deed of conce in fee to A., referrg shortly Recitals.
to the pcels; AND WHAS the sum of £—— pt of the sum of
£——, pd by the sd A. for the pchase of the sd hds & premes Part of
afsd, was in fact moy belonging to the sd B., & the sd pchase purchase-
was made by the sd A. as to —— eql undivided —— pts of money
the sd hds & premes (being such a proportion of the whole of belongs to
the sd hds & premes as the sd sum of £—— bears to the sd *cestui que*
sum of £——), as a tree for & on behalf of the sd B., as the *trust.*
sd A. doth hby admit & declare: NOW THIS INDRE Wit-
WITNETH that in conson of the premes it is hby agrd & decld nesseth.
betn & by the sd pties hto that the sd A., his hrs & assns, shl Declaration
stand & be seised of, & entled to ALL THOSE —— eql undivided of trust.
—— pts or shares of & in all the sd hds & premes comprd in Parcels.
or conveyed by the hinbfe recited indre, And of & in the
appurts thof, UPON TRUST for the sd B., his hrs & assns, & to Upon trust
convey, lease, assure & dispose of the same —— eql —— pts for *cestui*
or shares & premes in such mner as he or they shl direct. *que trust.*
 IN WITS, &c.

(b) See also SETTLEMENTS. As to the stamp, see the Stamp Act, 1891, 1st Schedule, tit. DECLARATION and SETTLEMENT.

(c) A deed, though not essential, is usual in the case of a formal declaration of trust.

DECLARATIONS OF TRUST.

II.

DECLARATION of TRUST of LEASEHOLDS by a HUSBAND
in favour of his WIFE, to be endorsed on the assignment
to the HUSBAND (a).

Recitals.

Agreement
for declara-
tion of
trust on
repayment
out of
wife's
separate
estate.

Repayment
accord-
ingly.
Wit-
nesseth.

Declaration
of trust for
wife abso-
lutely.

THIS INDRE, &c. *Pties*, A., 1; B., wife of the sd A.,
2. WHAS the sum of £——, in the within-written indre expd
to be pd by the sd A. for the pchase of the hds & premes thby
assned to the sd A., was so pd under an arrangemt betn the
sd A. & his wife the sd B., that the sd sum of £—— shd be
repd to him by his sd wife out of moys belonging to her for
her separate use, the intention being that the sd pchase shd
be made for the benefit of the sd B. & that upon the sd pchase
moy being so repd by her to the sd A., he should exte such
declon of trust of the premes in her favour as is hinafter
contd: AND WHAS the sd sum of £—— has accdly been repd
to the sd A. by the sd B. out of her separate moys & este as he
doth hby acknowe & declare: NOW THIS INDRE WITNETH
that in conson of such paymt, & in psuance of such arrangemt
as afsd, it is hby agrd & decld that the sd A., his exs, ads, &
assns shl stand possed of the sd hds & premes comprd in &
assned by the within-written indre for all the term, este, &
intt thrin for wch the same premes are held under the within-
recited indre of lease subjt to the rent, covts, & condons thrin
reserved & contd in trust for the sd B., her exs, ads, & assns
absolutely as her separate ppty & este, & to be conveyed &
disposed of as she or they shl direct. IN WITS, &c.

Power of
husband to
convey to
wife.

(a) A husband can now convey to his wife freehold land or a thing in
action (Conv. Act, 1881, s. 50 (1)), and probably also leaseholds (Married
Women's Property Act, 1882, s. 1 (1)); *Ramsay v. Margrett*, [1894] 2 Q. B. 18;
see also *Re Marlborough*, [1894] 2 Ch. 133; but a declaration of trust may
be preferable in the latter case, as the law is not settled: *Hood & Challis*,
Conv. &c. Acts, 127. Where the lessor's consent is necessary to the assign-
ment of the lease, this may be an additional reason for effecting the object
by declaration of trust. In *Surman v. Wharton*, [1891] 1 Q. B. 491, which
was a case of a gift of a leasehold by husband to wife before the above Acts,
the form of the deed is not stated.

The deed would not, it is thought, be liable to *ad valorem* duty.

III.

DECLARATION of TRUST, by deed poll, of MORTGAGE DEBT,
where the Mortgage does not disclose the trust (b).

TO ALL TO WHOM THESE PSNTS shl come, A., of &c., B., of &c., & C., of &c., send greetg. *Recite mtge of even date from X. to A., B., & C., on a jt acct:* NOW THESE PSNTS WITS that the sd A., B., & C. do hby declare that the sd sum of £—— mentd in the sd recited indre of even date hwith to be lent by them to the sd X. as afsd was not their own pper moy, but was realised by them by the sale of the sum of £—— ——— stk, pt of the sum of £—— like stk, wch was standg in the names of the sd A., B., & C., as trees & exs under the will dated, &c., & proved on, &c., of G. of &c., deced, the sd sum of £——, stk, being pt of the psonal este of the sd G.: AND THE sd A., B., & C. do hby respdy declare that they & their exs, ads, & assns shl stand possed of the sd sum of £——, secd by the sd indre of even date hwith as afsd, & the intt thof & the secs for the same, & all benefit thof, Upon the trusts upon wch the same ought to be held in conseqce of the sum of £—— so lent by them as afsd, havg been pt of the psonal este of the sd G., deced. IN WITS, &c.

Wit-
 nesseseth.
 Origin of
 money.

Declaration
 of trust.

IV.

DECLARATION of TRUST of MONEY *secured by CONTRIBUTORY MORTGAGE taken in the names of TRUSTEES where the money is advanced by the lenders in UNEQUAL Shares (c).*

PARTIES, A., B., & C., *trustees*, 1; D., *one lender*, 2; E. & F., *other lenders*, 3. *Recital of mtge for £3,000 to A., B., & C. on a jt acct, referrg to the pcels as, "certn ——— & hds situate in the parish of ———, & coy of ———, thrin parlarly desc'd ;"*

Recitals.

(b) A declaration of trust, though usually dispensed with in this case, is sometimes desirable.

(c) See Vol. II., MORTGAGES.

Title to
money
advanced.

Agree-
ment.

Wit-
nesseth.
Declaration
of trust.

Sums to be
secured
rateably.

AND WHAS the sum of £3,000 in the hinbfe recited indre stated to have been advced by the sd A., B., & C., was in reality advced as to £1,000, pt thof, by the sd D., & as to £2,000, the other pt thof, by the sd E. & F., out of moys belonging to them as trees of an indre of settlemt, dated, &c. : AND WHAS the sd A., B., & C. have at the reqt of the sd other pties hto agrd to exte such declon of trust as is hinafter containd : NOW THIS INDRE WITNETH that in psuance of the sd agrmt, & in conson of the premes, it is hby decld that the sd A., B., & C., their exs, ads, & assns, shl stand possed of the ppal sum of £3,000, seced by the hinbfe recited indre, & the intt thron. In trust as to the sum of £1,000, pt of the sd ppal sum of £3,000, & the intt on such sum of £1,000 for the sd D., his exs, ads, & assns, & as to the sum of £2,000 other pt of the sd ppal sum of £3,000, & the intt on such sum of £2,000, for the sd E. & F., their exs, ads, & assns or other the trees or tree for the time being of the sd indre of settlemt : AND FURTHER, that the sd sums of £1,000 & £2,000, & the intt thron respdy, shl have no pefce or priority the one over the other, but shl be payable rateably & eqllly out of any moys wch shl be reced or realised by the sd A., B., & C., their exs, ads, or assns, under or by virtue of the sd indre of mtge. IN WITS, &c.

DEEDS, FORMAL PARTS OF (a).

I. THIS INDRE, made the — day of —, BETN A. (b) of, &c., of the one pt, & B. of, &c., & C. of, &c., of the other pt, WITNETH that, &c. [AND THIS INDRE ALSO, *or*, FURTHER WITNETH, &c.]

Commencement of indenture of two parts without recitals.

II. THIS INDRE, made the — day of —, BETN A. of, &c., of the first pt, B. of, &c., of the second pt, & C. of, &c., & D. of, &c., of the third pt. WHAS, &c. NOW THIS INDRE WITNETH that, &c. [AND THIS INDRE ALSO, *or*, "FURTHER" WITNETH, &c.]

The same of several parts with recitals.

III. KNOW ALL MEN BY THESE PSNTS that I, A. of, &c., [We, A. of, &c., & B. of, &c.], do, &c., *using the first pson throughout.*

Commencement of deed poll without recitals.

IV. TO ALL TO WHOM THESE PSNTS shl come, A. of, &c., sends [A. of, &c., & B. of, &c., send] greetg. WHAS, &c. NOW THESE PSNTS WITS that, &c., *using the third pson.*

The same with recitals.

V. THIS INDRE, made the — day of —, BETN the within-named A. of the one pt, & B. of, &c., of the other pt.

Endorsed deed (c).

VI. THIS INDRE, made the — day of —, BETN A. of, &c., of the first pt, B. of, &c., of the second pt, & C. of, &c., of the third pt, supplemental [intd to be read as annexed] to an

Commencement of deed supplemental, or to be read as

(a) As to the form and execution of deeds, see 30 Sol. J. 636, 651, 667.

(b) As to the various methods of describing the parties, see Elph. Introd., pp. 51—56. As to the notarial or other authentication of deeds to be acted on abroad, see Taylor on Evidence; above, p. 189, note, and DECLARATIONS STATUTORY.

(c) The principal deed will be referred to as the "within written" indenture, matters recited in it as "within recited," and persons or matters mentioned in it as "within named" or "mentd," the first time they are mentioned. If the reference is to a prior endorsed deed, the word "above" will be substituted for "within."

As to endorsed deeds.

annexed to
a prior in-
strument
(a).

The same
where the
prior in-
struments
are de-
scribed in
a schedule
(a).

Testimo-
nium of an
indenture.

The like
where a
company or
corporation
is a party.

The same.
Another
form.

Testi-
monium of
indenture
executed

indre dated, &c., & made betn, &c., [being a settlemt, &c.]
hinafter called the ppal deed, & anor indre dated, &c., & made,
&c., [being a mtge, &c.] hinafter called, &c.

VII. THIS INDRE, made, &c., *as in last form*, supplemental [intd
to be read as annexed] to the sevl indres, deeds poll, &
instrumts, the parlars & natures whof, togr with the names or
designons by wch the same are hinafter refd to, are specified
in the schdle hto.

VIII. IN WITS whof the sd pties hto have hrunto set their
respive hands & seals the day & yr first above written.

IX. IN WITS whof the sd —, *Co or Corporon*, have caused
their common seal to be hrunto affixed, & the sd other pties
hto have, &c., *as in precedg form*.

X. IN WITS whof the sd pties hto of the first, second, &
third pts have hrunto set their respive hands & seals, & the
sd —, *Co or Coporon*, have, &c., the day & yr first above
written.

XI. IN WITS whof, K. of, &c., *atty*, by virtue of a power of
atty under the hand & seal of the above-named A. dated the
— day of — hath hrunto set the hand & seal of the

As to the
use of sup-
plemental
deeds.

(a) For recitals making a deed supplemental, &c., see p. 365. As to
supplemental deeds, see the Conv. Act, 1881, s. 53; above, p. 71, note.

The above enactment has been the means of bringing the plan of making
deeds supplemental considerably into use as a means of saving recitals,
although it does not of course derive any efficacy from the Act which it
would not otherwise possess; and recourse was occasionally had to it before
the Act to save long recitals, where endorsement was impracticable or not
convenient. The Act speaks of *deeds* being made supplemental to *deeds*,
but a deed or agreement may of course be made supplemental to any
previous deed or agreement, or to a will, or to any number of previous
instruments. This plan is often more convenient than endorsing the
instrument, especially where more than one solicitor is employed in the
business; but where the new deed has to be approved by other solicitors
who are not acquainted with the prior instruments, the form of a supple-
mental deed is generally inconvenient; and there can be no object in
using it unless a material advantage in brevity is thereby attained. It
is generally convenient and makes the new deed more intelligible if the
nature of the prior instruments is very shortly stated, and a short designa-
tion is given to each, as above. As to the mode of referring to matters or
persons mentioned in the previous instruments (which in an endorsed deed
would be referred to as "within" mentioned, &c., see last note), it is in-
correct to say "above" mentioned, &c., unless the new deed is actually
physically annexed; the proper way is to say "mentioned, or, recited, in the
principal deed," &c.

sd A. [*or*, K. of, &c., as atty for the above-named A. by virtue, &c., hath hrunto set his hand & seal (b)] the sd other pties, &c. by attorney (c).

XII. IN WITS whof the sd A. [I the sd A., *or*, we the sd A. & B.] hath [have] hrunto set his [my] hand & seal [our respive hands & seals] the — day of —. Testimonium of a deed poll.

XIII. IN WITS whof the sd —, *Corporon*, have caused their common seal to be hrunto affixed this — day of —. The same by a corporation.

XIV. GIVEN under the common seal of the sd —, *Corporon*, *or*, “our common seal,” this — day of —. The same. Short form.

XV. SIGNED, SEALED, & DELIVERED by the within-named (d) A., in the presce of Attestation of a deed.

B. of, &c.

C., clerk to Messrs. K. & L., of, &c.,
Solicitors.

XVI. SIGNED, SEALED, & DELIVERED by the within-named A., the words — [to — both inclusive] havg been previously erased in [written on an erasure in] [interlined betn] the tenth & eleventh lines of the first skin, [page] & the words — havg been previously erased in the third line of the second skin [page], in the presce, &c. Attestation where there are erasures or interlineations.

XVII. SIGNED, SEALED, & DELIVERED by the within-named B., the erasures & interlineons noticed in the atteston of the exon by the within-named A., havg been previously made, in the presce, &c. Subsequent attestation where the first has noticed erasures.

XVIII. SIGNED by settg his mark, & sealed & delivered by the within-named A., he being unable to write, in the presce, &c. Attestation of execution by marksman.

XIX. SIGNED, SEALED, & DELIVERED by the within-named A., the same havg been first read over to him, he being blind [unable to read the same] *or*, “the purport & effect of the Attestation for party blind or illiterate.

(b) See the Conv. Act, 1881, s. 46.

(c) The testimonium in this case is usually in the ordinary form, which is not incorrect, as the act of the attorney is in law that of the principal. The attorney may sign the name of the principal, adding under the signature, “by power of atty to B. (the atty);” or he may sign “B. as atty for A. by power of atty, dated, &c.” See the Conv. Act, 1881, s. 46. As to execution by attorney.

(d) For a deed engrossed book-wise, in this and the following forms of attestation clauses, say, “above-named.”

same havg been previously explained by me to him, & he appeared perfectly to understand the same," in the presce, &c.

Attestation
for deed
executed
by at-
torney.

XX. SIGNED, SEALED, & DELIVERED by K., *atty*, as the atty of the within-named A., in the presce, &c.

Attestation
for com-
pany or
corpora-
tion.

XXI. THE COMMON SEAL of the within-named —, *Co or Corporon*, was affixed to the within-written indre in the presce of us,

A. & B., [Dirors.

C. secretary].

Attestation
where some
signatures
in sche-
dule.

XXII. SIGNED, SEALED, & DELIVERED by the respive pties whose names are subscribed in the — column of this schdle in the presce of the respive psons whose names are subscribed in this column opposite to the names of such respive pties.

Attestation
for infant
coming of
age.

XXIII. SIGNED, &c., by the within-named —, on the — day of — (he havg attained his majority on the — day of —), in the presce of, &c.

Receipt
endorsed
(a).

XXIV. RECED of the within- [above] named A. the sum of £—, being the conson moy within- [above] expd to have been pd by him to me. Dated the — day of —.

Wits.

Signed

B.

Instruc-
tions for
executing
and attest-
ing a deed.

XXV. It shd be signed by — at the seal at the foot, where his initials are written in pencil, & after signg he shd touch the seal & say, "*I deliver this as my act & deed.*"

The above shd take place in the presce of a [two] wits[es] who shd sign his [their] name[s], address[es], & profession[s] or business[es] (if any), under the mem of atteston written at the end [on the back] of the instrumt, where pointed out in pencil.

(a) This is now seldom required. See the Conv. Act, 1881, s. 54; above, p. 375, note.

DIRECTION AND CONSENT.

I. To A., B., & C., the trustees of an indenture dated, &c., being the settlement made on our marriage.

Consent to trustees of settlement investing in funds.

We hereby consent to your investing the sum of £——, now in your hands as trustees of the said settlement, in the purchase of 2½ p.c. Consolidated Stock. As witnesses our hands this —— day of ——.

Signatures of husband & wife.

Witnesses.

II. To A. & B., the trustees of the will of the late ——.

Request to trustees of will to change investment.

I do hereby request you to sell the sum of £—— — p.c. Consolidated Stock now standing in your names as such trustees, & representing, or, “forming part of,” the share, to the income whereof I am entitled for life, of the residuary estate of the said testator, & to invest the net proceeds of such sale (after payment of the expenses of the sale & reinvestment) in the purchase of £—— — p.c. Debenture Stock of the —— Railway Company [or in case such investment shall, owing to the state of the market, or for any other reason be deemed inexpedient, then in the purchase of, &c., or in any other investment authorised by the said will, or by law]. As witnesses, &c.

Signature of tenant for life.

Witnesses.

III. To A. & B., the trustees of a settlement, dated, &c., made on our marriage.

Direction to trustees to call in mortgage and purchase land.

We do hereby request you to call in the sum of £—— (forming part of the funds subject to the trusts of the said settlement secured upon a mortgage of the —— estate belonging to Mr. ——, & to invest the same or a sufficient portion thereof in the purchase of the freehold estate or property known as, &c., & to invest any surplus of the said moneys which may remain after completing the said purchase & payment of the

other the trees or tree for the time being of the within-written indre, do & shl forthwith after the sd marre sell the sd sum of £—— Bank Stk & pay the moys pduced thby to G., of, &c., & H., of, &c., *the trees of the daur's settlcmnt*, or the survor of them, to the intent that they or he may stand possed thof in trust for her the sd E., her exs, ads, & assns. IN WITS, &c.

Request to
pay money
to solicitor
(a).

VIII. To Mr.

I hby authorise & reqt you to pay the sum of £——, wch is payable to me under a deed of, &c., being a convce of, &c., *or as the case may be*, & any intt due or to become due in respt thof, to my solor, Mr. ——, whose rect shl be an effectual dischge to you for the same.

Dated, &c.

Direction
by tenant
for life to
trustees to
make in-
vestment.

IX. To A. & B., the trees of an indre of settlemnt, dated, &c., & made, &c., *or*, "the will of X., deced." I do hby by virtue of the powers vested in me under the Settled Land Acts, 1882 to 1890, as tenant for life in posson under the sd settlemnt [will] direct you to invest the [sum of £——, pt of the] capital moys now in your hands as such trees as afsd in the pchase of, &c. Dated, &c.

Signature of tenant for life or limd owner.

Wits.

Direction
by tenant
for life to
trustees
to pay
purchase-
money and
costs.

X. *Commencemt as in last form.* I do hby by virtue, &c., direct you to sell out a sufft portion of the sum of £—— 2½ p.c. Consold Stk, now invested in your names as trees of the above-mentd settlemnt [will], & to apply the pceeds, *or*, "to apply a sufft portion of the capital moy in your hands, subjt to the trusts of the sd settlement [will]," in paymt of the pchase-moy, amtg to £——, of an este situate, &c., wch I have lately contracted to pchase from X. upon the exon of the convce thof on the —— day of —— next, or such later day as may be appted for the complon of such pchase, AND in paymt of the bill of costs [amtg to £——] of my solors, Messrs. —— [& of your solors, Messrs. ——] in relon to such pchase. Dated, &c.

Signature of tenant for life or limd owner.

Wits.

(a) An express authority of this kind is now seldom needed, having regard to the Conv. Act, 1881, s. 56, and the Trustee Act, 1893, s. 17 (1) (see above, p. 375, note); but may occasionally be required.

XI. *Commencement as in form IX.*

We hereby by virtue, &c., authorise & request you as trustees of the above-mentioned settlement [will], to apply any capital money in your hands subject to the trusts thereof in or towards payment of the bill of costs of Messrs. —, as solicitors for the mortgagees of the said estates, in respect of sales of portions of the — estates, & also in payment of the bill of costs of Messrs. — as solicitors for yourselves, the said trustees, & in payment of the bill of costs of Messrs. —, as solicitors for ourselves, the tenants for life of the said estates, in respect of such sales (b). Dated, &c.

Direction
by tenants
for life to
trustees to
pay costs
of sales.

Signatures of tenants for life or limited owners.

Wits.

XII. To A., tenant for life [limited owner] of the Y. estate under an indenture of settlement, dated, &c., & made, &c., or, "the will of X., deceased." We, the trustees of the above-mentioned settlement [will], do hereby, pursuant to the Settled Land Acts, 1882 to 1890, give our consent to your cutting & selling the timber which is ripe & fit for cutting on the lands described in the schedule hereto [Provided that three-fourths of the net proceeds of the sale are to be paid to us to be applied as capital money] (d). Dated, &c.

Consent by
trustees to
tenant for
life cutting
and selling
timber (c).

[Short schedule of parcels.]

Signatures of trustees.

Wits.

XIII. *Commencement as in last form.* We the trustees under the above-mentioned settlement [will] do hereby, pursuant to the Settled Land Acts, 1882 to 1890, give our consent to your selling [leasing] the mansion house & lands described in the schedule hereto, or any part or parts thereof, in such manner & subject to such [provisions] conditions & provisos & upon such terms as you may think fit, And we hereby undertake & agree to sign & execute such deeds or

Consent by
trustees to
sale or
lease of
mansion
house, &c.
(e).

(b) The costs of obtaining the concurrence of mortgagees of the life estate ought not, as a general rule, to be paid out of capital money: *Cardigan v. Curzon Howe*, 41 Ch. D. 375.

(c) See the Act of 1882, s. 35.

(d) See the Act, s. 35 (2).

(e) See the Act of 1890, s. 10, and Forms VI. and VII. in the Rules of Court of December, 1882, under the original Act.

instruments for further testifying our consent to any such sale [lease] as may be deemed proper. Dated, &c.

[Short schedule of parcels.]

Signatures of trustees.

Wits.

Direction by tenant for life to purchaser to pay money to trustees or into Court.

xiv. To Mr. A., purchaser.

I, B., of &c. tenant for life [limited owner] of the property known as —, comprised in a contract dated, &c., & made between myself of the one part & you of the other part, do hereby, by virtue of the powers vested in me under the Settled Land Acts, 1882 to 1890, direct you to pay the purchase-money [amount to £—] payable by you under the said contract to C., of, &c. & D., of, &c., the trustees of an indenture of settlement dated, &c., or, “the will of X., deceased,” [or, into Court, pursuant to the order dated, &c., which has been obtained for that purpose]. Dated, &c.

Signature of tenant for life or other limited owner.

Wits.

Consent by a tenant for life to a sale or lease by the trustees under an express power in the settlement (a).

xv. Commencement as in form ix.

I, A., as tenant for life, or, “being beneficially entitled or intitled for my life,” under the above-mentioned settlement [will] do hereby pursuant to the provisions of the Settled Land Acts, 1882 to 1890, give my consent to your selling [leasing] the property described in the schedule hereto, &c. *give short particulars of the material terms as to price or rent, &c., & otherwise*, & I undertake & agree to sign & execute such

As to consent of tenant for life to exercise of express powers by trustees.

(a) The restrictions in s. 50 of the Act against the assignment by the tenant for life of his statutory powers, and the provision in s. 53 that in exercising such powers he is to have regard to the interests of all parties entitled, must be taken to apply to his power, under s. 56, of consenting to any sale or lease by the trustees under an express power or trust as well as to the other powers of the tenant for life under the Act; so that it is conceived he cannot delegate his power of consenting, or give a general consent, to any future exercise of the express powers of the trustees; and that the consent must be a specific one to each transaction involving an exercise of discretion by the tenant for life. These considerations render it desirable that the tenant for life should give his consent by joining in the conveyance or lease; but this may be sometimes inconvenient, and the consent may have to be given separately, as in this form. The consent might bear even date with and refer to the conveyance or lease, but should not refer to the contract, as this would make the contract part of the title. Where several persons together constitute the tenant for life, the consent of one only is necessary; Settled Land Act, 1884, s. 6 (2).

deeds or instrumts for further testifying my consent to such sale [lease] at the cost of the trust este as may be deemed pper. Dated, &c.

[*Schdle of pcels.*]

Signature of tenant for life.

Wits.

xvi. *Commencemt as in form XII.* I, A., of &c., as mtgee of your life este under the above-mentd settlemt in the hds hinafter mentd (with other hds) under an indre of mtge, dated, &c., & made, &c., do hby consent to the sale by you under the powers of the Settled Land Acts, 1882 to 1890, of the freehd & inhance of the hds mentd in the schdle hto to X., of, &c., for the sum of £——, upon paymt of the sd pchase-moy to the trees of the sd settlemt, & do agree upon & subjt to such paymt being made at your expse, to do & exte & to procure to be done & exted all such acts & assurances as shl be necy or pper for releasg the sd premes from the ppal moys & intt secd by the above-mentd mtge & from all claims & demands thrunder, but witht prejudice to the chge to wch I am entled as such mtgee as afsd on your life intt in the sd sum of £—— & the investmts & income thof. Dated, &c.

Consent by mortgagee of life estate of tenant for life to sale (b).

[*Schdle of pcels.*]

Signature.

Wits.

(b) See the Act of 1882, s. 50 (3). Some practitioners prefer to make the mortgagee of the life estate join in the conveyance to release and convey; but this seems unnecessary, as the legal estate would be drawn out of the mortgagee by the statutory conveyance of the tenant for life; and a separate consent is preferable, as it enables the mortgage to be taken off the title on the death of the tenant for life.

DISCLAIMER (a).

I.

DISCLAIMER *by* TRUSTEE *under a* WILL. RESERVATION of BENEFICIAL INTEREST.

Recitals.
Will.

TO ALL TO WHOM THESE PSNTS shl come, A., of, &c.,
sends greetg. WHAS X., late of, &c., duly made & exted his
will dated, &c., & thby gave all his real & psonal este not
thinbfe specifically given, to the sd A. & B. of, &c., their hrs,

As to dis-
claimers.

(a) See Elph. Introd. Conv. 475. A deed is generally desirable as evidence of the disclaimer of a trusteeship, but is, of course, not necessary. It was at one time supposed that a deed of disclaimer was necessary as to the legal estate in land, but this is exploded; see *Re Gordon*, 6 Ch. D. 531; *Re Birchall*, 40 Ch. D. 436. In general the office of executor is separable from that of trustee, so that one may be accepted without the other; but the two offices may be so inseparably connected by the will that the renunciation of probate would amount to the disclaimer of the trusteeship, *Re Gordon*, 6 Ch. D. 531; Lewin on Trusts, 212; and conversely the probate of the will would be the acceptance of the trusteeship, *Mucklow v. Fuller*, Jac. 198; Lewin, 214. Of course a trustee cannot disclaim a part only of the trusts, *Urch v. Walker*, 3 M. & C. 702; or the trusts of part only of the property, *Lord and Fullerton's Contract*, [1896] 1 Ch. 228; but two of several devisees in trust were held not debarred by accepting the trust from disclaiming the legal estate in copyholds in favour of their co-devisee to save a fine on admittance, *Wellesley v. Withers*, 4 El. & Bl. 750.

As to
married
women.

As to disclaimers by married women, see 8 & 9 Vict. c. 106, s. 7. Whether or not the Married Women's Property Act, 1882, applies to property vested in a married woman as trustee (as to which, see p. 491, note), a disclaimer by her of real or leasehold property is not affected by that Act, and should in all cases be by deed acknowledged with the husband's concurrence; but on the retirement of a married woman from a trusteeship the trust estate may undoubtedly be vested under the Trustee Act, 1893, s. 11, replacing the Conv. Act, 1881, s. 32, in the co-trustees by declaration without acknowledgment. As to disclaimer of powers, see the Conv. Act, 1882, s. 6.

For a precedent of a disclaimer, and appointment of new trustees by the same deed, see above, p. 134.

exs, ads, & assns, upon certn trusts thrin mentd, & the sd testor thby appted the sd A. & B. exs of his sd will [& gdians of his infant chln:] *Recite codl alterg trusts*: AND WHAS the sd A. declined to act as tree & exor under, or to accept the gifts made to [or the office of gdian vested in] him jtly with the sd B. in trust as afsd, in & by the sd will & codl, & has renounced probate thof: NOW THESE PSNTS WITS that the sd A. doth hby wholly & absolutely renounce & disclaim ALL the real & psonal este, & premes whatsr by the sd will & codl, or eir of them, given to him the sd A. whether jtly with the sd B. or orwise in trust as afsd, & all real & psonal este wch at the dece of the sd testor was vested in him as a tree or mtgee (b), & all trusts, powers, & authorities by the sd will & codl or eir of them reposed or vested in him the sd A., his hrs, exs, ads, or assns, whether jtly with the sd B., his hrs, exs, ads, or assns, or orwise, & the offices of tree & exor [& gdian] under the sd will & codl: [PROVD ALWAYS that nothing hrin contd shl operate as a disclaimer or rele of any benefl intt, whether vested or contingent, to wch the sd A. is now, or he, his hrs, exs, or ads, may or might hrafter become entled under the trusts, powers, or provons of the sd will or codl, or any legacy or beqt thby given to the sd A. for his own benefit]. IN WITS, &c.

Refusal to act.

Wit-
nesseth.

Disclaimer.

Reserva-
tion of
beneficial
interest (c).

II.

DISCLAIMER *by* INDORSEMENT *of* TRUSTEESHIP *of* DEED.

TO ALL TO WHOM THESE PSNTS shl come, the within-named A. sends greetg. WHAS the sd A. has never exted the within-written indre, & has never accepted or acted

Recital.

(b) This disclaimer of trust and mortgage estates is required only as to copyholds to which the testator had been admitted, which, by the Copyhold Act, 1894, repealing, and, by s. 88, re-enacting the Copyhold Act, 1887, s. 45, are excepted out of the Conv. Act, 1881, s. 30; all others would go with the executorship.

(c) As to the right of a legatee to accept a beneficial gift and disclaim an onerous one, see *Guthrie v. Walrond*, 22 Ch. D. 573; *Re Hotchkys*, 32 Ch. D. 408.

Wit-
nesseth.
Disclaimer.

in the trusts thof & is desirous of renouncg & disclaimg such trusts : NOW THESE PSNTS WITS that the sd A. doth hby wholly & absolutely renounce & disclaim ALL & SINCE the real & psónal este, hds, & premes whatsr by the within-written indre expd to be grted & assned to the sd A., his hrs, exs, ads, & assns, jtly with the within-named B. & C., their hrs, exs, ads, & assns, in trust as within mentd or orwise howsr, & the treeship of the within-written indre, & all trusts, powers, & authorities expd to be thby vested or reposed in, or given to him, the sd A., his hrs, exs, ads, or assns, whether jtly with the sd B. & C., or any other psons or pson, or orwise howsr. In WITS, &c.

DISENTAILING ASSURANCES (a).

I.

DISENTAILING DEED of FREEHOLDS by TENANT in TAIL in POSSESSION (b).

PARTIES, A., *tenant in tail*, 1; B., *grtee to uses*, 2: **WHAS** Recitals.
under an indre, dated, &c., made, &c., in conson of the marre, Settlement
aftwds solemnised, of X. & Y. respdy deced, the late father & or will.
mother of the sd A., or, “under the will, dated, &c., & a codl
thto, dated, &c., & proved, &c., of X., late of, &c., deced,” the
sd A. is tenant in tail [male] in posson of the hds hby grted,
or recite settlemt or will & codl, subseqt events showing the title
of A.: **AND WHAS** the sd A. is desirous of barrg the entail of Desire to
the sd hds & of all other, if any, hds of wch he is tenant in bar.
tail [male or in tail] as hinafter mentd, & of vestg the same in
himself in fee simple in posson, in mner hinafter appearg :
NOW THIS INDRE WITNETH that the sd A. doth hby grt Wit-
unto the sd B., **ALL & SINGR** the freehd [messes, farms, lands, nesseth.
tenemts, tithes, tithe rent-chges &] hds, situate or arisg (c) in Grant.
Parcels (d).

(a) See 3 Dav. Prec., pt. 2, p. 1284 *et seq.*; and as to the insertion of recitals, see 1 Dart, V. & P., 590; Elph. Introd. Conv. 491.

(b) See 3 & 4 Wm. IV. c. 74, ss. 15—21, and ss. 40—49. To be enrolled within six months under s. 41. As to what is a “disposition” within the Act, see *Green v. Paterson*, 32 Ch. D. 95. Having regard to *Peacock v. Eastland*, 10 Eq. 17, in which a disentailing deed was held to be defeated by the disclaimer of the grantee to uses, it is desirable that the grantee should execute the deed. As to the power of the Court to rectify a disentailing deed, see *Hall Dare v. Hall Dare*, 29 Ch. D. 133; 31 Ch. D. 251. As to disentail-
ing deeds.

(c) The word “arising” has reference to incorporeal hereditaments, such as tithes, rents, and advowsons, to which the word “situate” is not appropriate; see *Crompton v. Jarratt*, 30 Ch. D. 298.

(d) The parcels in a disentailing deed are usually described by a short general description, which, besides saving expense on enrolment, is for every reason the better course. The following is a mode of describing the

Haben-
dum.
To grantee
discharged
from
entail.
To use of
grantor in
fee (b).

the sevl parishes of — & —, or elsewhere in the coy of —, comprd in or assured by the sd indre of settlemt of, &c., or, “devised by the sd will & codl of the sd — deced, or eir of them,” or wch are now by any means subjt to the subsistg uses or trusts of the sd indre of settlemt, or, “will & codl,” & all other (if any) freehd hds of wch the sd A. is now by any means tenant in tail [male or in tail] at law or in equity under or by virtue of the sd indre of settlemt, or, “will & codl, or eir of them,” or orwise (a), To HOLD the same Unto the sd B. & his hrs, dischgd from all estes in tail [male or in tail] of the sd A. at law or in equity, & all estes, rts, intts, & powers to take effect after the determinon or in defeasce of such estes in tail [male or in tail], To THE USE of the sd A., his hrs & assns for ever. IN WITS, &c.

Variation
where
property
altered by
sales, &c.

parcels where there have been sales, &c., under the powers of the settle-
ment or will, or inclosures, &c. :—

“ALL & SINGR, &c., *as above*, save & except such pt or pts of the sd hds & premes as by means of any sale, exchange, parton, enclosure, award, or orwise, have been disposed of or parted with or become extinguished, & also (by way of conveyce & not of exception) all other freehd hds wch by means of any conveyce, assurce, exchange, parton, enclosure, award, allotmt, or orwise, have become subjt to the uses or trusts of the sd indre of settlemt, or, ‘will & codl,’ & all other (if any), &c., *as above*.”

(a) It is often desirable to add words barring the entail in any moneys arising from sales, &c.; see *Mills v. Fox*, 37 Ch. D. 153, and Precedents IV. and VII. This might be included in the same operative clause.

As to
keeping
alive
powers of
sale, &c.

(b) Where there are charges of jointures or portions subsisting under the settlement, it may be suggested as deserving of consideration whether it might not be better to limit the property to such uses as the tenant in tail may by deed or will appoint, and in default to the old uses (as in Precedent IV., *mutatis mutandis*), so as possibly to keep alive his estate tail, and enable him to override the family charges under the powers of the Settled Land Act, 1882; see s. 58 (1) (i); and p. 457, note.

II.

DISENTAILING DEED of FREEHOLDS by TENANT IN TAIL in Possession. *Short form without recitals.*

PARTIES, A., *tenant in tail*, 1; B., *grtee to uses*, 2: WIT-
NETH that the sd A. doth hby grt unto the sd B., ALL &
SINGR the freehd hds situate or arisg in the sevl parishes of
—— & —— in the coy of —— or elsewhere, of or to wch he,
the sd A., is seised or entled at law or in equity for any este
in tail [male or in tail], under an indre, dated, &c., & made,
&c., *or*, “the will, dated, &c., & proved, &c., of X., late of,
&c.,” *or orwise*, howsr, To HOLD the same UNTO the sd B. &
his hrs dischged, &c., *as in last Precedent*, To THE USE of the
sd A., his hrs & assns for ever. IN WITS, &c. (c).

Wit-
nesseth.
Grant.
Parcels.

Habendum
to grantee.

To use of
grantor in
fee.

III.

DISENTAILING DEED of FREEHOLDS by TENANT IN TAIL, with CONSENT of PROTECTOR (d).

PARTIES, A., *tenant in tail*, 1; B., *protector*, 2; C., *grtee to uses*, 3. *Recite will or settlemt by wch the estes for life & in tail are limd, down to & includg the limon to A., & subseqt events, showg that A. is tenant in tail & B. protector*: NOW THIS
INDRE WITNETH that the sd A., with the consent [hby
testified] of the sd B., as protector of the settlemt, doth hby
grt unto the sd C., *pcels as in Precedent I.*, To HOLD the same
UNTO the sd C. & his hrs, subjt & witht prejudice to the estes
& chges prior to & to the powers overreachg the este in tail
limd to the sd A. by the sd will [indre of settlemt] (e), but

Wit-
nesseth.

Grant.

Haben-
dum.

(c) To be enrolled under 3 & 4 Wm. IV. c. 74, s. 41.

(d) See 3 & 4 Wm. IV. c. 74, s. 34. To be enrolled under s. 41.

(e) The more common form is, “uses & estes limd or created by the sd will [indre of settlemt], wch are prior to the este in tail of the sd A., & to the powers annexed to such prior estes so

To grantees
subject to
estates
prior to
estate tail.

To use of
tenant in
tail in fee. discharged, &c., as in *Precedent I.*, To THE USE of the sd A., his
hrs & assns for ever (a). IN WITS, &c.

IV.

DISENTAILING DEED of FREEHOLDS and ENTAILED MONEY by TENANT in TAIL with CONCURRENCE of PROTECTOR limiting the estate to their JOINT APPOINTMENT (b).

PARTIES, A., tenant for life, 1; B., tenant in tail, 2; C. & D., trees, 3. *Recital of settlmt on the marre of A., & subseq events showg that the este stands limd to the use of A. for life with remr to B. in tail male, subjt to incumbces & to a jture & portions & terms of yrs for securg them, & that a sum of £ — arisg from sales, &c., under the powers of the settlmt or orwise, stands in the names of K. & L. the present trees of the settlmt on trust to be re-invested in the pchase of land to be settled to the same uses*: AND WHAS the sd A. & B. are desirous of barrg the este in tail male & all other estes in tail of the sd B. in the sd hds, moys, & premes, & all estes, intts, & powers to take effect after the determinon, or in defeasce thof, & of assurg & limitg the same in mner hinafter expd: NOW THIS INDRE WIT-
NETH that in psuance of such desire & in conson of the

far as such uses, estes, & powers are capable of takg effect." It must, however, be observed that sometimes charges, &c., may exist under a prior settlement, and that the powers overreaching the estate of the tenant in tail are not necessarily annexed to the prior estates.

(a) If it is intended that the tenant in tail shall not be independent of the tenant for life, the reversion should be limited to their joint appointment, and in default as the tenant in remainder appoints if he survives the tenant for life (not to him in fee), and in default of appointment to the old uses (see the next *Precedent*). If the entail is barred preparatory to a resettlement, it is best to make the tenant for life convey his life estate, so that the joint power of appointment affects the fee in possession, as in the next *Precedent*.

(b) See *Elph. Introd.* 499, and the last note. As to the effect of a disentailing assurance by a tenant for life and remainderman in tail on a shifting clause, see *Doe v. Earl of Scarborough*, 3 Ad. & El. 2, 897; *Milbank v. Vane*, [1893] 3 Ch. 79; 3 Dav. Prec., pt. 1, 398.

premes, the sd A., & the sd B., with the consent of the sd A. as protector of the sd settlemt, accdg to their respive estes & intts in the premes, do resply hby grt unto the sd C. & D., *pcels as in Precedent I.*: To HOLD the same UNTO the sd C. & D. & their hrs, SUBJT to the chges & incumbces hinfte mentd so far as the same affect the same premes resply, & to the estes & chges prior to & the powers overreaching the este in tail male of the sd B. (other than the este of the sd A. durg his life) (c), BUT DISCHGED, &c., *as in Precedent I.*: To SUCH USES, upon such trusts, & subjt to such powers & provons, as the sd A. & B. shl at any time or times hrafter by any deed or deeds, revocable or irrevocable, jtly appt, AND IN DEFAULT of & subjt to any such jt apptmt, to the use of the sd A. & his assns durg his life witht impeachmt of waste in restoron, continuon, & confirmon of the este for his life limd to him by the hinfte recited indre of settlemt with the powers annexed to such life este (d) with remr, To SUCH USES, upon such trusts, & subjt to such powers & provons, as the sd B., in case he shl survive the sd A., shl at any time or times after the death of the sd A., by any deed or deeds, revocable or irrevocable, [or by will or codl exply referrg to this psnt power or the ppty subjt thto (e)] appt, AND IN DEFAULT of & subjt to any such apptmt, To THE USES, upon the trusts, & subjt to the powers & provons to, upon, & subjt to wch, under or by virtue of the hinfte recited indre of settlemt, the same premes resply stood limd & settled immedly bfe the exon

Grant.

Habendum to grantee, subject to incumbrances

To such uses as A. and B. appoint. In default, To A. for life.

Remainder to such uses as B. appoints.

In default, To original uses.

(c) See note (a), p. 630.

(d) This restoration of the old life estate will be effectual according to its tenor, so that A. will retain his powers as tenant for life under the *original* settlement (although the life estate is displaced by being postponed to the overriding joint power), both as regards the express powers (see 3 Dav. Prec. 596; *Re Wright*, 28 Ch. D. 93), and also, doubtless, as regards the powers of the Settled Land Acts. This is important, in order that the means of overriding any family charges which may be subsisting under the old settlement may be preserved; and even assuming the doctrine of *Re Ailesbury*, [1893] 2 Ch. 345, as to "compound" settlements, to be good law, it is still necessary, since the doctrine depends on the old life estate being kept alive; see above, p. 457.

As to preserving old life estate.

(e) This requirement, the object of which is to prevent a general devise by will from operating contrary to the intention as an exercise of the power, is effectual; see *Phillips v. Cayley*, 43 Ch. D. 222, overruling *Re Marsh*, 38 Ch. D. 630; and see *Re Davies*, [1892] 3 Ch. 63.

As to effect of general devise where power required to be referred to.

of these psnts, or such of the same uses, trusts, powers, & provons as shl be then subsistg or capable of takg effect, & so as to restore & confirm the same uses, trusts, powers, & provons: AND THIS INDRE ALSO WITNETH that in further psuance, &c., & in conson, &c., the sd A., & the sd B., with the consent of the sd A., &c., *as above*, accdg to their respive intts in the premes, do resply hby grt & assn unto the sd C. & D., ALL that the sum of £——, &c., now standg in the names of the sd K. & L. as afsd, To HOLD UNTO the sd C. & D., their exs, ads & assns (a), subjt to the estes & chges prior to & the powers overreachg the este in tail male of the sd B. in the same premes (other than the este of the sd A. durg his life), BUT DISCHGED, &c., *as in Precedent I.*: UPON the like trusts & subjt to the like powers & provons as if the same were capital moy arisg from a sale made after the date of these psnts of pt of the hds comprd in the sd settlemt of, &c., AND it is hby agrd & decl'd that the sd C. & D. shl be the trees of the settlemt hby made for the pposes of the Settled Land Act, 1882, & any act or acts amendg or extendg the same (b). IN WITS, &c. (c).

Further
witnesseth.

Assign-
ment.

Money.

Habendum
to grantee.

Upon
trusts of
sale
moneys.

V.

SURRENDER *out of Court of* COPYHOLDS by LEGAL TENANT IN TAIL IN POSSESSION *for barring the entail (without recitals) (d).* VARIATIONS *where there is a* PROTECTOR *who* CONSENTS, *and for case of* EQUITABLE TENANT IN TAIL (e).

(a) 3 & 4 Wm. IV. c. 74, s. 71.

(b) This clause should be inserted, as the deed operates as a new settlement.

(c) To be enrolled under 3 & 4 Wm. IV. c. 74, s. 41.

(d) Where recitals are used they should take the following form:—

WHAS, &c., *recite settlemt or will, &c., admittce & facts showg that A. is [equitable] tenant in tail [& B. protector].*

(e) See 3 & 4 Wm. IV. c. 74, ss. 50—54. To be entered on the Court Rolls. As to the bar of the entail of copyholds by enfranchisement, see *Ex parte School Board for London*, 41 Ch. D. 547, and by a married woman tenant in tail, see *Carter v. Carter*, [1896] 1 Ch. 62.

VI.

DISENTAILING *Deed by TENANTS in COMMON in tail extending to a possible ACCRUING share under cross remainders, one tenant in tail being a MARRIED WOMAN. VARIATIONS where her share is limited to her HUSBAND (a).*

Recitals. *PARTIES, A. & B., tenants in tail, & C., husbd of B., 1; X., protector, 2; Y., grtee to uses, 3. Recite settlemt of freehds to use of X. for life, with remr, subj to intermediate estes wch have failed or are not likely to take effect, to the daurs of X. as tenants in common in tail with cross remrs in tail with remrs over: That X. has had three daurs, namely, A. & B. & D., marre of B., death of D. leary issue: AND WHAS the pties hto of the first pt, with the concurrce of the sd X. as protector of the settlemt, are desirous of barrg all the estes tail of the sd A. & B. in the hds & premes comprd in or wch are now subj to the uses of the sd settlemt, includg their estes tail in the share thrin of the sd D. deced, in remr expectant upon the failure of her issue, & all estes to take effect after the determinon or in defeasce of such respive estes tail, & of assurg their respive shares in the same hds & premes, includg the shares to wch they are entled in remr as last afsd in mner hinafter expd [it being the desire of the sd B. that her share thrin shl be limd to & vested in her sd husbd (b)]: NOW THIS INDRE WITNETH that the sd respive pties hto of the first pt with the consent (hby testified) of the sd X. as protector of the settlemt (the sd B. actg hrin with the concurrce of her sd husbd) do resply, accdg to their sevl estes & intts in the*

Desire to bar entail.

Wit-
nesseth.

Disentail-
ing assur-
ances by
married
women.

(a) See 3 & 4 Wm. IV. c. 74, s. 40; and as to enrolment, s. 41; and as to married women, s. 77. If either the settlement or the marriage was after 1882, the case would be within the Married Women's Property Act, 1882, and the husband's concurrence and the acknowledgment of the deed by the wife would be unnecessary: *Re Drummond*, [1891] 1 Ch. 524. The acknowledgment (where the case is under the old law) should, of course, precede the enrolment, though it need not: *Ex parte Taverner*, 7 De G. M. & G. 627. If the fee is to be limited to the husband, the grantee to uses may be dispensed with, as by the Conv. Act, 1881, s. 50, a wife may convey freeholds direct to her husband.

(b) It is desirable to recite expressly the intention in this respect.

premes, hby grt unto the sd Y., ALL those the two eql undivided third pts or shares of them the sd A. & B., AND ALSO all that the remaing eql undivided third pt or share to wch they are resply entled in remr expectant on the failure of issue of the sd D. deced as afsd of & in, *pcels, see Precedent I.*, AND all other, if any, hds & premes whatsr & wheresr situate, wch are now by any means subjt to the subsistg uses of the sd settlemt, or of wch, or of any undivided share or shares whof the sd A. & B. resply are now by any means tenant in tail at law or in equity, under or by virtue of the sd settlemt, or any convce or assurce to the uses or upon the trusts thof, To HOLD the same Unto the sd Y. & his hrs, subjt to the estes & chges prior to & to the powers overreachg the respive estes tail of the sd A. & B. resply at law or in equity, but dischged from such respive estes tail, & all estes, powers, & intts to take effect after the determinon or in defeasce of such respive estes tail, nevs as to the share or shares of & in the sd hds & premes of wch the sd A. was, previously to the exon of these psnts, tenant in tail TO THE USE OF the sd A., her hrs & assns, for her separate use, AND as to the share or shares of & in the sd hds & premes of wch the sd B. was, previously to such exon, tenant in tail, TO THE USE OF the sd B., her hrs & assns, for her separate use, or, "TO THE USE OF the sd C., his hrs & assns." IN WITS, &c.

Grant.
Undivided
shares.

Haber-
duni.

VII.

DEED by TENANT in POSSESSION for barring ESTATES TAIL in FREEHOLDS and MONEY, and EQUITABLE ESTATES TAIL in COPYHOLDS, and enlarging BASE FEES in FREEHOLDS and EQUITABLE BASE FEES in COPYHOLDS. VARIATIONS for TENANT IN TAIL in remainder, the consent of the PROTECTOR being given by a SEPARATE DEED (c). A short form without recitals.

PARTIES, A., tenant in tail, 1; B., grtee to uses, 2. WIT- NETH that the sd A. doth hby grt unto the sd B. ALL &

Wit-
nesseth.
Grant.

(c) See 3 & 4 Will. IV. c. 74, ss. 41—47. To be enrolled under s. 41, and entered on the court rolls of the manors under s. 53, within six calendar

Entailed
parcels.

Habendum
to grantee.
To use of
grantor in
fee.

Further
witnesseth.
Grant.
Base fee
parcels.

Haben-
dum.
To gran'ee.
To use of
grantor
in fee.

SINGR the hds of freehd tenure whatsr & wheresr situate or arisg, of or to wch he, the sd A., is seised or entled for any este in tail male or in tail [or quasi in tail male or in tail (a)], at law or in equity: AND ALSO all & singr the hds of copyhd or customary tenure whatsr & wheresr situate of or to wch he, the sd A., is seised or entled for any este in tail male or in tail [or quasi in tail male or in tail], in equity only: AND ALSO all hds wch are or may be subjt to be sold & the moys arisg from the sale whof are or may be subjt to be invested in the pchase of hds to be settled so that the sd A. wd have thrin any este in tail male or in tail at law or in equity, To HOLD the same UNTO the sd B. & his hrs (b), To THE USE of & in trust for the sd A., his hrs & assns, for ever, dischged, &c., as in *Precedent I.*, but as to the sd hds of copyhd or customary tenure accdg to the custom of the sevl manors of wch the same are resply holden: AND THIS INDRE ALSO WITNETH that the sd A. doth hby grt unto the sd B. ALL & SINGR (if any) the hds of freehd tenure whatsr & wheresr situate or arisg, in wch an este in tail male, or in tail, at law or in equity (of wch the sd A., if such este had not been barred, wd have been actual tenant), has been barred & converted into a base fee: AND ALSO all & singr (if any) the hds of copyhd or customary tenure whatsr & wheresr situate, in wch an este in tail male or in tail in equity only (of wch the sd A., if such este had not been barred, wd have been actual tenant), has been barred & converted into a base fee, To HOLD the same UNTO the sd B., & his hrs, To THE USE of & in trust for the sd A., his hrs & assns, for ever, so as to enlarge the base fee now vested in him as afsd into a fee simple abso-

months after execution: *Honywood v. Foster*, 30 Beav. 1; *Gibbons v. Snape*, 1 De G. J. & S. 621; *Green v. Paterson*, 32 Ch. D. 95. It may be mentioned that a deed disentailing customary freeholds not held by copy does not require entry on the rolls; see *Shelford R. P. Stats.*, note to 3 & 4 Wm. IV. c. 74, s. 53; as to the enlargement of a base fee by a married woman, see *Re Drummond*, [1891] 1 Ch. 524.

(a) As to the bar of quasi-entails in estates *pur autre vie*, see 2 *Vaisey on Settlements*, p. 1310; and see as to quasi-entails, 1 *Steph. Comm.*, p. 431.

(b) If A. is tenant in tail in remainder of the whole or part, insert here, and in the corresponding places in the subsequent witnessing parts, "subjt [as to such of the sd premes as are subjt thto] to the uses & trusts wch precede such estes in tail male or in tail resply."

lute, but as to the sd hds of copyhd or customary tenure accdg to the custom of the sevl manors of wch the same are resply holden : AND THIS INDRE ALSO WITNETH that the sd A. doth hby grt & assn unto the sd B. ALL THAT the sum of, &c., in the Chancery Divon of the High Ct of Justice, standg to the credit of the cause of X. v. Y., *referce to record*, the acct of, &c. (c) : AND the hds to be pchased thwith : AND ALL other moys, stks, funds, & secs (if any), whether in Ct or not, wch, or the pceeds of the sale of wch are subjt to be invested in the pchase of hds of wch the sd A. wd be tenant in tail male or in tail : To HOLD the same UNTO the sd B., his exs, ads, & assns, dischged, &c., *as in Precedent I.*, IN TRUST for the sd A., his exs, ads, & assns, as psonal este (d). IN WITS, &c.

Wit-
nesseth.
Grant and
assignment
of money.

Haben-
dum.
To grantee.
In trust for
grantor.

VIII.

PROTECTOR'S CONSENT *to the barring of an estate tail (e).*

TO ALL TO WHOM, &c., A., *protector*, of, &c., sends greetg : *Recite settlemt shortly, showg that A. is protector & B., tenant in tail* : NOW THESE PSNTS WITS that the sd A., as protector of the sd settlemt, doth hby give his consent to every or any disposon wch the sd B. shl make of the hds & premes comprd in or wch are now by any means subjt at law or in equity to the subsistg uses or trusts of the sd settlemt or any of such premes or any pt thof. IN WITS, &c.

(c) As to the necessity for a disentailing deed, where the money is in Court, see 3 Dav. Prec. 1302 ; *Re Butler's Will*, L. R. 16 Eq. 479 ; *Re Row*, L. R. 17 Eq. 300 ; *Re Wood's Settled Estates*, L. R. 20 Eq. 372 ; *Re Broadwood's Settled Estate*, 1 Ch. D. 438 ; *Re Reynolds*, 3 Ch. D. 61.

(d) If A. is tenant in tail in remainder, say, "IN TRUST for the sd A., his hrs & assns."

(e) See 3 & 4 Will. IV. c. 74, s. 34. To be enrolled in Chancery under s. 46, or for copyholds on the court rolls of the manor under s. 51.

EXCHANGES.

L

AGREEMENT *for an* EXCHANGE of FREEHOLDS for FREEHOLDS, COPYHOLDS. (a), or LEASEHOLDS, and for payment of an agreed SUM for EQUALITY. VARIATION where such sum is to be fixed by ARBITRATION (b).

Parties. AGRMT made this — day of —, 18—, BETN A., of, &c.,
Recitals of of the one pt, & B., of, &c., of the other pt. *Recite title of A.*
title. *to freehds descd in 1st schdle in fee, p. 362 [subjt as hinafter*
 mentd]. Similar recital of title of B. to freehds or copyhds in
 2nd schdle, [or, if leasehd, AND WHAS the sd B. is entled to the
 leasehd hds descd in the 2nd schdle hto for the residue now
 unexpired of a term of — yrs from the — day of —,
 under an indre of lease dated, &c., & made, &c., subjt to the
 yrly rent of —, & to the covts & condons in the same indre

(a) As to the enfranchisement of copyholds, see the Copyhold Act, 1894, Pts. I. and II.

As to ex-
changes.

(b) As to exchanges, see 2 Dav. Prec., pt. 1. Reference may be made to the enactment in 8 & 9 Vict. c. 106, s. 4, doing away with the mutual implied condition of re-entry, which was productive of great inconvenience in exchanges at common law; see as to this Byth. Conv., Vol. IV., 3rd ed., pp. 3, 4. As to exchanges by the Board of Agriculture under the Inclosure Acts, 1845 to 1882, which are extensively made use of, not only in cases where the parties are unable otherwise to effect a valid exchange, but also where they are so able but are desirous of saving the expense of the double investigation of title, see p. 644, note. Recourse cannot, however, be had to the Acts where the inequality in value exceeds one-eighth. As to exchanges in the case of lunatics, see 53 Vict. c. 5, s. 120 (b).

Stamp.

A conveyance on exchange is chargeable with *ad valorem* sale duty on the sum, if any, paid for equality: Stamp Act, 1891, schedule "Exchange," and s. 73. The contract for exchange, even if it took the form of mutual sales, would not be chargeable with *ad valorem* duty under s. 59 of the Act, as the subject-matter is a legal, and not merely an equitable, estate in the land; see p. 317, note.

contd:] AND WHAS the sd A. & B. have agrd to make an exchge by way of mutual sale & convce (c), of the sd respive hds descd in the 1st & 2nd schdles hto, & for the paymt of a sum of moy for equality of value as hinafter mentd: NOW IT IS HBY AGRD as follows:

Agree-
ment.

1. THE SD A. shl in conson of the hds hby agrd to be conveyed by the sd B. to the sd A. [& of the sum of moy to be pd by the sd B. to the sd A. as hinafter mentd], sell & convey to the sd B. the hds descd in the 1st schdle hto, with the appurts thof & the inhance thof in fee simple in posson free from incumnces [except as hinafter mentd].

Agreement
for convey-
ance by A.

2. *Similar agrmt for sale & convce by B. to A. of the hds descd in 2nd schdle; or, if copyhd, THE SD B. shl, in conson, &c., sell & convey to the sd A. the hds descd in the 2nd schdle hto, with the appurts & the inhance thof in posson accdg to the custom of the sd manor, subjt to the manorial rts, but free from incumnces [except as hinafter mentd]: or, if leasehd, THE SD B. shl, in conson, &c., sell & assn to the sd A. the hds descd in the 2nd schdle hto for the residue now to come of the sd term of — yrs, subjt to the sd yrly rent of £—, & the covts & condons in the sd indre of lease contd, but free from incumnces [except as hinafter mentd].*

Agreement
for convey-
ance by B.

3. [*Provon as to outgoings, easemts, &c., subjt to wch the respive premes are conveyed, see CONDONS OF SALE.*]

4. THE SD hds belonging to the sd A. being considered to be of greater value than the sd hds belonging to the sd B. [by the sum of £—], the sd B. shl, upon the exon of the convce or assurce to him of the sd hds of the sd A., pay to the sd A. the sum of £— for equality of value, or, “a sum of moy for equality of value to be fixed, at the jt expse of the pties, by C., of, &c., & D., of, &c., or in case of diffe by an umpire, to be appted by such referees in writg bfe enterg on the referce; & the decision of the sd referees or their umpire shl be final,” or, “the differce in value of the sd premes shl be made good by a paymt in moy, to be made by the sd A. to the sd B., or

Payment of
money for
equality.

(c) The contract should be expressed to be by way of mutual sale to prevent any doubt whether the statutory provisions as to contracts for sale (as to which see p. 224) are applicable; or these provisions may be expressly incorporated by the clause at the end, which in any case had better be inserted.

by the sd B. to the sd A. (as the case may be), & the amt & time of paymt thof, & the mode in wch the sd sum shl be pd, namely, whether by a sum in gross or by instalmts or by way of rent-chge, & the mode in wch the paymt, if postponed, shl be secd, shl be fixed, &c., *as bfe*, & the sd moy shl be pd or secd accdly."

Title. 5. EACH of them, the sd A. & B., shl deliver to the other of them or his solor, within — weeks from the date hrof, an abstract of his title to the sd respive premes, *Add provons as to title, &c., as on a sale, see CONDONS OF SALE & CONTRACTS FOR SALE* [or, each of the sd pties shl accept the title of the other witht investigon, & witht requirg any abstract of such title, or the prodon of any deeds or other evidce thof].

Completion and conveyance. 6. THE sd exchange shl be completed on the — day of — at the office of Messrs. —, at —, when each of the sd pties (togr with all other necy pties, if any,) shl exte or make a pper assurce of the sd hds & premes belonging to him unto the other of them free from incumbces [save as afsd]; to be prepared by & at the expse of the pty to whom the same is made. *Add any provons as to corts to be entd into by eir pty as on a sale.*

Possession and outgoings. 7. EACH of the sd pties shl be entled to the posson or rect of the rents & profits of, & shl dischge the outgoings in respt of, the premes hby agrd to be conveyed or assured to him from the — day of — next.

Interest on non-completion. 8. IF FROM any cause whatever the sd respive convces & assurces shl not be completed on or bfe the sd — day of — next, intt at the rate of £5 p.c. p.a. upon the sum to be pd for equality of value as afsd shl be pd by the sd B., or, "the pty by whom such sum shl be payable," from the sd — day of — next, until the complon of the sd convces & assurces. *Add provon for compenson for misdescription & any other provons as to expses, retention of deeds, or orwise, wch may be required, as on a sale. See CONDONS OF SALE & CONTRACTS FOR SALE.*

9. THE PROVONS of the Vendor & Pchaser Act, 1874, & the Convcg Acts, 1881, 1882, relatg to contracts for sale of land, shl apply to this contract so far as the same may be applicable & subjt to the provons hrin contd in the same mner as if this were a contract for mutual sales. IN WITS, &c.

[Two schdles of pcels.]

II.

AGREEMENT *for* EXCHANGE of FREEHOLDS *between a* TENANT FOR LIFE, *under the* SETTLED LAND ACTS, *and an* ABSOLUTE OWNER, *with* VARIATIONS *where the exchange is subject to the* RESERVATION of a RIGHT OF WAY *for mining purposes, or of* RESTRICTIVE COVENANTS *affecting the land given in exchange, and where it is made partly in consideration of the* GRANT of a RIGHT OF WAY, *for mining purposes, over other adjoining land belonging to the absolute owner (a).*

ARTICLES OF AGRMT made the — day of —, BETN Parties. A., of, &c. (hinafter called the vendor (b), wch expression shl include his succors in title where the case so requires or admits) of the one pt, & B., of, &c. (hinafter called the pchaser (b), wch expression shl include his hrs, exs, ads, & assns, where the case so requires or admits) of the other pt, whby it is agrd as follows :

1. THIS agrmt is entd into by the vendor as tenant for life [limd owner], of the este known as the X. este, situate, &c., under the will, dated, &c., of Z., deced, & is intd to be carried

Vendor contracts as tenant for life.

(a) The Settled Land Act, 1882, s. 3 (iii.) and s. 4 (2, 5), authorises the tenant for life to make an exchange of the settled land or any part thereof for other land, including an exchange in consideration of money paid (i.e. by either party) for equality. The exchange may be subject to restrictions or reservations on either side, s. 4 (6) ; and by the Act of 1890, s. 5, extending s. 17 of the Act of 1882 (which applied only to mineral properties), easements or rights of any kind may be granted or reserved over or in relation to the settled land or the other land, or may be given or taken in exchange for land or any other easement or right. As to conveyances, see ss. 20, 24 : and as to incumbrances, s. 5. Where the tenant for life is the owner of the land to be exchanged for the settled land, the trustees of the settlement are to stand in his place for the purpose of exercising the statutory powers ; Act of 1890, s. 12. The general provisions stated p. 456 *et seq.* as to sales, conveyances, and re-investments, apply, as far as may be, to exchanges, except that (as pointed out at p. 463) s. 16 of the Act of 1890, extending the definition of "trustees of the settlement," does not apply to exchanges. By s. 18, money required for equality may be raised by mortgage ; see a Precedent of such a mortgage in Vol. II., MORTGAGES.

Provisions of Settled Land Act, 1882, as to exchanges.

(b) These expressions, although not strictly appropriate to an exchange, are used for convenience.

into effect under the powers of the Settled Land Acts, 1882 to 1890, as extended by the sd will.

Conveyance
by vendor.

2. THE vendor shl convey to the pchaser the pce of land, &c., wch is delineated on the plan hto annexed & thrin coloured —, formg pt of the X. este afsd [inclusive of the site of so much of the proposed new road shown on the sd plan as passes through the sd X. este] with the appurts thof & the inhance thof in fee simple in posson [subjt as hinafter exprd] in conson & exchange for the pces of land hby agrd to be conveyed by the pchaser to the vendor [& the rt of way or road hinafter agrd to be grted in exchange by the pchaser to the vendor through the este of the pchaser known as the Y. este] [& of the sum of moy to be pd by the pchaser for equality as hinafter mentd].

3. *Provons as to outgoings, tenancies, &c., affectg the land giren [& taken] in exchange.*

4. *Paymt of moy for equality, p. 639; the moy to be pd "at the option of the vendor to his trees or into Ct, &c."*

Reserva-
tion of
right of
way.

[5. THE sd convce to the pchaser shl also be subjt to the reservon hinafter agrd to be made to the vendor of the rt of way & road hinafter mentd, so far as the same passes through the land hinbfe agrd to be conveyed to the pchaser.]

Conveyance
by pur-
chaser.

6. IN conson & exchange for the pce of land hinbfe agrd to be conveyed to the pchaser the pchaser shl grt & convey to the vendor the pce of land, *pce's*, with the appurts thof & the inhance thof in fee simple in posson [togr with the rt of way & road hinafter mentd so far as the same passes through the sd este of the pchaser known as the Y. este, wch is delineated on the sd plan & thrin coloured —].

Right of
way.

[7. THE vendor & his lessees & tenants shl be entled in common with the pchaser & all other psons for the time being entled thto to a rt of way & road & with or witht horses & other animals, carts, carriages, & other vehicles for the convce of minl produce, &c., *state pposes*, through, along, & over the new road to be made by the pchaser as hinafter mentd through the sd Y. este, & the land hby agrd to be conveyed to the pchaser, from — common to the high road leadg from — to —, as shown on the sd plan, such rt of way & road to be seed to the vendor as to the pt thof wch passes through the land hinbfe agrd to be conveyed to the pchaser by way of reservon

as afsd, & as to the pt thof wch passes through the Y. este of the pchaser by way of grt & convce in exchange as afsd.]

[8. THE pchaser shl at his own sole expse make & construct the sd road (a), includg the portion thof passg through the land hinfte agrd to be conveyed to the pchaser, of an uniform width of not less than — feet throughout, & pperly metal the same to the satisfon in all respts of the surveyor of the vendor, & complete the same on or bfe the — day of —, & at all times keep in repair & maintain the sd road in good order & fit for use & traffic until the same shl be adopted by the parish or other local authority, & shl in the sd assurse or deed enter into a pper covt in that behalf.]

Making road.

9. THE pchaser shl in the assurse of the land hby agrd to be conveyed covt as follows, namely, *restrictive covts as to bldg, &c., on* “the land hby agrd to be conveyed to the pchaser,” see p. 424. The covts to be entd into as afsd shl be framed so as to be bindg so far as may be on the pchaser, his hrs & assns, & all psons from time to time entled to or intted in the sd land hby agrd to be conveyed, & so that such covts shl enure for the benefit of the vendor & all psons from time to time entled to or intted in the X. este afsd.

Restrictive covenants as to building.

10. *Usual provons as to title to land given by vendor in exchange—identity—expses—time for delivery of pchaser’s requons—rescindg of contract & misdescription.* See “CONDONS OF SALE” & “CONTRACTS FOR SALE.”

11. *Provons as to title to be deduced by pchaser.*

Provisions as to purchaser’s title.

12. THE vendor shl be subjt to the like restrons & stipulons as to the expses incidental to such dedon of title as last afsd, & as to the time for deliverg requons & objons with respt to such title as are hinfte contd & made bindg on the pchaser with respt to the title to the land hby agrd to be conveyed in exchange to him.

13. THIS agrmt shl, subjt to the stipulons hinfte contd, be completed & carried out on the — day of — at the office of Messrs. —, the vendor’s solors, by the exon by the sd

Completion.

(a) It is a question whether the power in s. 16 of the Settled Land Act, 1882, to lay out and appropriate roads, &c., extends to authorising the expenditure of capital money in the construction, &c., of the roads, &c.; see ss. 21 (iii.) and 25 (xvii.); but if the site of the roads is sold or given in exchange, this liability may be imposed on the purchaser.

Construction of roads out of capital money.

respive pties & all other necy pties, if any, of a pper assurse or deed, to be prepared by & at the expse of the pchaser; & the expse of the perusal on behalf of & exon by all pties other than the vendor or his trees (shd their concurree be necy) of such assurse or deed shl be borne by the pchaser. *Provon as to covts of tenant for life as at p. 239.* A duplicate of the sd assurse or deed, to be prepared by & at the expse of the vendor, shl be exted by the pchaser.

14. *Provons as to posson & outgoings, & as to munimts retained by the respive pties.* See "CONDONS OF SALE" & "CONTRACTS FOR SALE." AS WITS, &c.

III.

AGREEMENT for an EXCHANGE to be carried out by the BOARD OF AGRICULTURE (a).

Parties.	MEM OF AGRMT made the — day of —, BETW A., of, &c., of the one pt, & B., of, &c., & C., of, &c., of the
Recitals.	other pt. <i>Recitals showg the title of the pties</i> ; AND WHAS the sd A. has agrd with the sd B. & C. to make such exchange as is hinafter mentd: NOW IT IS HBY AGRD as follows:
Agree- ment to exchange.	1. THE sd A. shl give to, & cause to be vested in the sd B. & C., their hrs & assns, the hds descd in the 1st schdle hto, with the appurts, in exchange for the hds descd in the 2nd schdle hto, with their appurts, wch shl be given by the sd B. & C. to or caused by them to be vested in the sd A., his hrs & assns.
Comple- tion.	2. THE exchange shl be effected within — calr months from the date hrof, & shl be carried out & perfected by the
As to exchanges by the Board of Agricul- ture.	(a) See 8 & 9 Vict. c. 118, s. 147, &c.; 9 & 10 Vict. c. 70; 10 & 11 Vict. c. 111, ss. 4 & 6; 12 & 13 Vict. c. 83, ss. 7 & 11; 15 & 16 Vict. c. 79, s. 17, &c.; 17 & 18 Vict. c. 97; 20 & 21 Vict. c. 31, s. 4, &c.; 31 & 32 Vict. c. 39; 39 & 40 Vict. c. 56, s. 33, and see note on Precedent I., p. 638. The designa- tion of the "Copyhold Enclosure and Tithe Commissioners" was, by the Settled Land Act, 1882, s. 48, altered to "The Land Commissioners for England;" and the functions of that body are now by the Board of Agriculture Act, 1889 (52 & 53 Vict. c. 30), s. 2, transferred to the Board of Agriculture.

Board of Agriculture under the provons of the Acts of Parlia-
ment relatg to the exchange of lands.

3. ALL the costs & expses of & incidental to these psnts, & Costs.
the carrying out & perfectg of the sd exchange, shl be borne &
pd as to one moiety by the sd A., & as to the other moiety by
the sd B. & C.

4. In case, by reason of the default of eir of the sd pties Rescission.
hto, the sd exchange shl not be perfected within ——— calr
months from the date hrof, it shl be lful for the pty not in
default at any time after the expiron of such period, to deter-
mine this agrmt by notice in writg to the other of the sd pties
[in wch case the pty in default shl reimburse the other pty on
demand all costs & expses incurred by him or them in relon
to the sd intd exchange]. IN WITS, &c.

IV.

CONVEYANCE of FREEHOLDS *with the concurrence of a*
MORTGAGEE, *by way of EXCHANGE for freeholds con-*
veyed by a DEED of even date. VARIATION where
MONEY *is received or paid for EQUALITY of exchange.*

PARTIES, A., owner of ppty conveyed by this deed, 1 ; B., mtgee,
2 ; C., owner of ppty conveyed by deed of even date, 3. Recite A., Recital.
seisin in fee of, “ the hds descd in the 1st pt of the schdle hto : ”
subjt to mtge to B. for securg £—— & intt. AND WHAS the sd Agree-
A. has agrd with the sd C. for the exchange of the sd hds hby ment.
grted for a pce of land & hds belonging to the sd C. situate,
&c., wch are descd in the 2nd pt of the schdle hto : [AND for
the paymt by the sd C. to the sd A., or, “ by the sd A. to the Sum to be
sd C.,” of the sum of £—— for equality of exchange] ; agrmt paid for
of B. to concur, p. 373. AND WHAS by an indre bearg even equality.
date hwith, & made, &c., the sd pce of land & hds agrd to be Deed of
given in exchange by the sd C., as afsd, have been conveyed even date.
to the sd A. in fee simple in conson of the assurce hby
made [& of the paymt by the sd A. to the sd C. of the sd sum
of £—— agrd to be pd for equality of exchge as afsd], NOW Wit-
THIS INDRE WITNETH that, in psuance of the sd agrmt nesseth.

Grant.

Haben-
dum.To use of
grantee.

& in conson of the convce contd in the sd indre of even date hwith [& of the sum of £—— upon the exon hrof pd by the sd C. with the consent of the sd B. to the sd A. for equality of exchange, the rect whof is hby acknowd], the sd B., as mtgee, at the reqt of the sd A., doth hby grt & rele, & the sd A., as benefl owner, doth hby grt & confirm unto the sd C., *pcels*, p. 377 ; To HOLD the same UNTO & TO THE USE of the sd C., his hrs & assns for ever, *free from the mtge*, p. 395 ; [*Acknmt by B. as to munimts retained*, p. 418]. IN WITS, &c.

[*Schdle of Pcels.*]

V.

AGREEMENT *between* TRUSTEES *and* URBAN AUTHORITY
for an EXCHANGE (*give and take*) of SMALL STRIPS of
LAND to WIDEN *and* IMPROVE a ROAD.

Parties.

Recitals.

Wit-
nesseth.

MEM OF AGRMT made the —— day of ——, BETN A., of, &c., B., of, &c., & C., of, &c. (*the trees under the will & codl of the sd D. deced*), hinafter called “the trees,” by E., of, &c., their agent of the one pt, & the mayor, aldermen & burgesses of the borough of ——, actg by the town council as the urban sanitary authority of the sd borough, hinafter called “the corporon,” by F., of, &c., town clerk of the sd borough, their agent, of the other pt : WHAS the trees are as such trees as afsd the owners of certn lands & hds known as the —— este, pt of wch abuts upon & has a frontage to —— Road, in the borough of —— afsd : AND WHAS the sd —— Road, so far as it abuts upon the sd —— este, now is of irregular width & in some pts considerably narrower than the minimum width now allowed by the bye-laws of the sd borough : AND WHAS it will be mutually advantageous to the pties hto for a give & take line to be arranged betn them as shown on the plan annexed hto by the red line marked A B, with a view to the sd —— Road being improved and widened to a minimum width of —— feet : WITNETH that the trees & the corporon agree as follows :—

1. THE trees & the corporon shl adjust the boundary of

the sd — este abuttg upon the sd — Road by adoptg as its boundary the sd line shown on the sd plan & marked A. B., & the trees shl give to the corporon for the pposes of improvng & wideng the sd — Road the land coloured — on the sd plan, hinafter reld to as “land given,” now formg pt of the sd — este, & the corporon as such urban sanitary authority as afsd shl give in exchange to the sd trees the land coloured green on the sd plan, hinafr reld to as “land taken.”

2. As the land given & the land taken are resply of very small area, the trees shl not be called upon to show any title to or to make a convce of the land given, nor shl the corporon be called upon to show any title to or make a convce of the land taken.

No title or conveyance to be shown or made.

3. THE sd give & take line is agrd to betn the trees & the corporon for the ppose of enablg the corporon to improve & widen the sd — Road to a minimum width of — feet, & the corporon hby agree to complete the wideng of the sd — Road so far as it abuts on the lands & hds of the trees within —, & to make & construct at their own expse, & as soon as the sd improvemt & wideng are commcd, a good & substantial post & wire fence similar to that boundg the other portion of the — este abuttg upon — Road afsd along the sd give & take line betn the points marked A. & B. on the sd plan. IN WITS, &c.

Street to be widened and fenced.

VI.

CONVEYANCE *in* EXCHANGE by ONE DEED (a) of FREE-HOLDS *between Tenants in Fee* for STRAIGHTENING BOUNDARIES. AGREEMENT *as to* PARTY-WALL, and RESERVATION *of right to* LIGHT.

PARTIES, A., owner of one ppty, 1; B., owner of other ppty, 2.

WHAS the sd A. is entld in fee simple, free from incumbces, to the land with the bldgs thron, edged resply — & —

Recitals.
Title of parties.

(a) To be executed in duplicate. It is usual, where the case admits, to have two deeds; see Precedent iv.

Agree-
ment for
exchange,

And as to
boundary,
party-wall
and light.

Wit-
nesseth.

Grant.

Haben-
dum.

Reserva-
tion and
grant of
light, &c.

Agreement
as to
boundary.

on the plan hto annexed, & the sd B. is entled in fee simple, free from incumbees, to the land with the bldgs thron, edged resply — & — on the sd plan, wch adjoin or are contiguous to the sd land of the sd A. : AND WHAS the sd A. & B. have agrd to exchange the sd pces of land edged resply — & — on the sd plan (formg pt of the ppty to wch they are resply entled as afsd), with the object of straighteng the boundary lines betn their respive ppties wch are uneven & irregular, & to adjust & settle such boundary lines in mner hinafter appearg, & they have also agrd to enter into the arrangemt hinafter contd for the reservon or grt to the sd B. of such rt of light & air & other rts as are hinafter expd, NOW THIS INDRE WITNETH that in psuance of the sd recited agrmt & in conson of the convce in exchange hinafter made by the sd B. & of the premes, the sd A., as benefl owner, doth hby grt unto the sd B. all that pce of land contg — square feet or thrabouts & edged — on the sd plan hto annexed : To HOLD the same unto & to the use of the sd B., his hrs & assns. *Similar grt by B. to A. of the other pce of land given in exchange*, “subjt to such reservon or grt to the sd B. as is hinafter contd.” PROVD ALWAYS, & it is hby agrd & decld, that the grant & convce lastly hinbfe contd shl be subjt to the reservon of, & the sd A. doth hby grt to the sd B., his hrs & assns, the free and uninterrupted access of light & air at all times hrafter over the sd pce of land edged — on the sd plan, to the bldgs of whatsr height & in whatsr poson wch shl for the time being be erected or standg on the land of the sd B., edged — on the sd plan, or any pt thof & to all windows or openings wch may from time to time exist in such bldgs, & with liberty to the sd B., his hrs & assns, from time to time to increase the height of the sd bldgs & to rebuild, add to, or alter the same in such poson & mner & with such windows or openings for light or air as may be thought fit, & that the sd pce of land edged — shl at all times hrafter be kept by the sd A., his hrs & assns, open & unbuilt upon, & that no erection or thing shl at any time be placed thron wch may in any degree obstruct or interfere with such access of light or air as afsd ; AND IT IS HBY FURTHER AGRD & decld that the straight line marked on the sd plan betn the points L, M, N & O, shl henceforth be the boundary line betn the sd

hds & pptides of the sd A. & B. & their respive hrs & assns :
 AND FURTHER that the wall now standg betn the points marked Party-wall.
 — on the sd plan shl be deemed & used & maintained as a
 party-wall (a) betn the sd hds & pptides of the sd A. & B.
 [Acknmt & undertakg by A. as to munimts retained by him.
 The like by B., p. 418.] IN WITS, &c.

VII.

EXCHANGE of FREEHOLDS *between a* TENANT FOR LIFE
conveying under the SETTLED LAND ACTS, *and an*
 OWNER IN FEE, *with mutual grants of* RIGHTS OF
 WAY, *and* RESTRICTIONS *as to* BUILDING, *Money being*
paid for EQUALITY of Exchange (b).

PARTIES, A., *tenant for life*, 1 ; B. & C., *trustees of settlemt*, 2 ;
 D., *owner in fee*, 3. *Recite settlemt under wch* “the sd A. is Recitals.
 tenant for life in posson of the X. este, wch includes the pces Settle-
 of land & hds first hby grted, & the land over wch the rt of ment.
 way first hinafter descd is hby grted ; and the sd B. & C. are
 the trustees of the same indre of settlemt for the pposes of
 the Settled Land Acts, 1882 to 1890” (c) ; *Recital of D.’s* Seisin of
seisin in fee of the “Y. este, wch includes the pces of land & owner.
 hds secondly hby grted, & the pces of land over wch the rt of
 way secondly hinafter descd is hby grted :” AND WHAS the sd Agree-
 A., by virtue of the powers of the sd Acts, has agrd with the ment.
 sd D. for the exchange of the pces of land & hds first hby
 grted for the pces of land & hds secondly hby grted ; & as pt
 of the terms of the sd exchange it was agrd betn the sd A. &
 D. that the rt of way first hinafter descd & hby grted shd be
 grted to the sd D. his hrs & assns, owners & occupiers of the
 Y este, in mner hinafter expd, & that the rt of way secondly
 hinafter descd & hby grted shd be grted to the sd A. & his
 succors in title, owners & occupiers of the X. este, in mner

(a) As to party-walls, see Elph. N. & C. Interpretation, 606.

(b) See Precedent II. and the notes thereto.

(c) See also the other forms of recital at p. 467.

Wit-
nesseth.

Grant by
tenant for
life.

Right of
way.

Habendum
to use of
owner.

Further
witnesseth.

Grant by
owner.

Right of
way.

Habendum
to uses of
settlement.

Covenant
by tenant
for life re-
strictive of
building.

Covenant
by owner

hinafter expd, and that these psnts shd contn such mutual restrictive covts as to bldg & as to the user in other respts of the respive pces of land & premes hby exchanged as are hinafter contd; and further that the sd B. & C. shd, out of moys in their hands formg capital moys of the sd settlemt liable to be invested under the afsd Act, pay the sum of £—— to the sd D. for equality of exchange; NOW THIS INDRE WITNETH that in psuance of the sd recited agrmt, and in conson of the convce by way of exchange hinafter made by the sd D., the sd A., as benefl owner, by virtue of the powers vested in him under the Settled Land Acts, 1882 to 1890, & the sd will, & of every other power him enablg, doth hby grt unto the sd D., *Pcels by referce to schdle & map, see p. 379*, TOGR WITH full rt and liberty for the sd D., his hrs & assns, owners & occupiers of the Y. este, &c., *rt of way, see p. 383*, To HOLD the same UNTO & TO THE USE of the sd D. his hrs & assns for ever, subjt to the leases & tenancies affectg the pces of land hinfce conveyed; AND THIS INDRE ALSO WITNETH that in further psuance, &c., & in conson of the convce by way of exchange hinfce made by the sd A., & of the sum of £—— now pd to the sd D. by the sd B. & C. by diron of the sd A. out of such capital moys as afsd (the rect, &c.), the sd D., as benefl owner, by the diron of the sd A., doth hby grt unto the sd B. & C., *Pcels by referce to schdle & map, see p. 379*, TOGR WITH full rt and liberty for the sd B. & C. & their hrs, and also for the sd A. and his succors in title, owners & occupiers of the X. este, &c., *rt of way, p. 383*; To HOLD the same UNTO the sd B. & C. & their hrs, subjt to the leases & tenancies affectg the sd respive pces of land & premes lastly hby conveyed, *to uses of settlemt, see p. 395*; AND the sd A. doth hby for himself, his hrs, exrs, ads, succors & assns, & so as by virtue of the provons of the Settled Land Acts, 1882 to 1890, to bind not only himself personally, but also all future owners & occupiers of the hds taken in exchange by him as afsd, & to bind such hds into whosesr hands the same may come, covt with the sd D. his hrs & assigns, the owner or owners for the time being of the Y. este, that the sd A. his succors & assns, will, &c., *Covts restrictive of bldg, &c., on the lands taken in exchange by A., see p. 424*; AND the sd D. doth hby for himself, his hrs, exs, ads, & assns, to the intent to

bind not only himself but all psons claiming title under him to the hds taken in exchange by him as afsd, covt with the sd B. & C., and their hrs, & also septely with the sd A. & his succors in title, the owner or owners for the time being of the X. este, that the sd D., his hrs & assns will, &c., *Covts restrictive of bldg, &c., on lands taken by D. in exchange, see p. 424; [Provo restrictg A.'s liability under implied covts for title, if required, p. 411, form II.]: [Acknmt & undertakg by A. with D., & by D. with B. & C., as to munimts retained by them resply, p. 418.]* IN WITS, &c.

[Two schdles of Pcels & two of Munimts.]

INDEMNITY (a).

I.

INDEMNITY to PURCHASER of LAND CHARGED with DEBTS and LEGACIES, effected by a DEMISE to TRUSTEES of lands of which the Vendor is seised in fee (b).

Recitals.	<i>PARTIES, A., vendor, 1; B., purchaser, 2; C. & D., trustees, 3. Recitals showg that A. is seised in fee of the lands "hby demised;" That under the will of K. he became seised in fee of the — este, subjt to a chge of debts & legacies; Sale and convce of even date of pt of the — este to B.: AND WHAS</i>
Agreement.	<i>upon the sd sale it was agrd that the sd A shd give to the sd B. such indemnity agst the debts & legacies chged by the sd will on the sd hds & premes conveyed to him by the hinfte recited indre, & orwise as is hinafter contd: NOW THIS</i>
Witnesseth.	<i>INDRE WITNETH that in psuance of the sd recited agrmt, & in conson of the premes, & of the sum of 5s. now pd to the sd A. by the sd C. & D. (c) the sd A. doth hby bargain, sell, &</i>
Bargain and sale.	

(a) See also BONDS and RELEASES.

As to freeing lands from incumbrances.	(b) As to freeing land from incumbrances on a sale, see the Conv. Act, 1881, s. 5, above, p. 501, note; and as to settled estates, the Settled Land Act, 1882, ss. 5, 24. An indemnity against a defect of title should, of course, usually be by a separate instrument, in order that the defect may not appear on the face of the title.
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Stamp.	As to the stamp duty on indemnity deeds and bonds, see the heading MORTGAGE, &c., in the schedule to the Stamp Act, 1891; <i>Lord Canning v. Roper</i> , 1 El. & B. 164; and as to equitable securities under hand only by way of indemnity, see sub-div. (3) of the schedule; the effect, however, of s. 88, sub-div. (2) of the Act is that where the total amount for which the indemnity is given is not limited, the security need not be stamped with <i>ad valorem</i> duty in the first instance, as the duty can be paid when occasion arises.
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As to nominal	(c) A nominal consideration is stated, and the words "bargain and sell" added in order to raise a use in favour of the trustees, without which they
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demise unto the sd C. & D., *pcels*, p. 377 ; To HOLD the same
 Unto the sd C. & D., their exs, ads, & assns, for the term of
 1,000 yrs from the day next bfe the date of these psnts, witht
 impeachmt of waste, upon the trusts hinafter decl'd, that is to
 say : UPON TRUST in case the sd B., his hrs, exs, ads, or assns,
 shl at any time within the lives & life of H.M. the Queen & her
 issue now living & the survor of them, or within 21 yrs after
 the death of such survor (*d*), pay or incur any sum or sums of
 moy, costs, damages, or expses in respt of the debts & legacies
 chgd by the sd will of the sd K. on the sd hds & premes
 conveyed to the sd B. by the hinfte recited indre of even date
 hwith, or any of them, or by reason of any action, pcdg, claim,
 or demand in respt of such debts or legacies or any of them,
 then & in every such case the sd C. & D., or the survor of
 them, or other the trees or tree for the time being of these
 psnts, shl by & out of the rents & profits of the sd hds &
 premes hby demised, or by the sale of timber or minls, or by
 mtge of the same premes or any of them for all or any pt of
 the sd term, or by all or any of the means afsd, or by any
 other reasble means, from time to time raise such sum or
 sums of moy as shl be sufft to pay & satisfy all sums of moy,
 damages, costs, & expses wch the sd B., his hrs, exs, ads, or
 assns, shl pay or incur as afsd, & also such sum or sums of
 moy as shl be required to satisfy all costs & expses incurred
 in or about the exon of the trusts of the sd term, or wch the
 sd trees or tree may incur in conseqce of any action or other
 pcdg wch may be instituted for raisg any moy under the
 trusts of the sd term or in anywise relatg thto, and shl apply
 the moys so to be raised as afsd accdly, & shl pay the surplus,
 if any, of the same moys to the sd A., his hrs or assns, AND
 SUBJT & witht prejudice to the trusts afsd, shl permit the sd
 A., his hrs & assns, to rece the rents & profits of the premes
 hby demised for his & their own benefit : PROV'D ALWAYS & it
 is hby agrd & decl'd that in case no claim or demand shl be
 made agst the sd B., his hrs or assns, or agst the sd hds &

Habendum
to trustees
for term.

Upon
trust to
indemnify
purchaser.

Proviso for
cesser of
term.

would only obtain an *interesse termini* until actual entry ; Elph. Introd. p. 176. considera
tion.

(*d*) Probably it is necessary to restrict the time as to remoteness, during which the indemnity may take effect ; see *contra*, *Massey v. O'Dell*, 10 Ir. Ch. 22. In most cases 21 years will be sufficient.

Provision
for protec-
tion of
mortga-
gees.

Incorporation of
statutory
covenants
for title.

premes conveyed to the sd B. by the hinbfe recited indre of, &c., in respt of any of the sd debts or legacies within the period of — yrs from the date of these psnts, or within the period hinbfe mentd wchever shl first happen, or in case all claims & demands wch shl be so made shl be orwise pd & satisfied within 3 calr months next after the same resply shl have been made, & if the sd B., his hrs, exs, ads, & assns, & also the sd trees or tree shl be reimbursed & satisfied by the sd A., his hrs, exs, ads, or assns, upon demand, all such moys, damages, costs, & expses, as he or they resply shl pay or incur in respt of the premes, then & in such case the sd term of 1,000 yrs shl immedly on the expiron of the sd period — of yrs be assned or surrendered to the sd A., his hrs, exs, ads, or assns, if so required, or shl orwise cease & determine: AND IT IS HBY AGRD & DECLD that, upon any mtge purportg to be made in psuance of the trusts hinbefore contd, the mtgee or mtgees shl not be bound to inquire as to the necessity or occasion for raisg any moy for the pposes afsd, or to see to the applicon of his or their mtge moy, & any such mtge may be made with a power of sale & with such other provons as may be deemed expedient: AND IT IS HBY decld that the same covts shl be deemed to be hby implied on the pt of the sd A. as if these psnts had been a convce by way of mtge & the sd A. had been expd to bargain, sell & demise the premes hby bargained, sold, & demised as benefl owner (a). IN WITS, &c.

Covenants
for title.

(a) Probably this is a "mortgage" within the Conv. Act, 1881, s. 2, so that the insertion of the words "as benefl owner" would imply the covenants for title under s. 7 (1) (C.) of the Act, see MORTGAGES; but to avoid question the statutory covenants are expressly incorporated. The trustees' receipt clause and power to appoint new trustees are supplied by the Trustee Act, 1893, repealing and by ss. 10 and 21 replacing the Conv. Act, 1881, ss. 31, 36; see SETTLEMENTS.

II.

DEED of DECLARATION of TRUST of a SUM of CONSOLS
produced by INVESTMENT of part of PURCHASE-MONEY
for INDEMNIFYING the purchaser against a CONTINGENT
EQUITABLE CHARGE.

PARTIES, A., vendor, 1; B., purchaser, 2; C. & D., trustees, 3.

Recite conveyance of even date by A. to B. of "certn hds situate in the parish of —, in the coy of —, known as, &c., & forming pt of an estate called the — estate"; AND WHAS during the investigation of the title to the premises comprd in the hereinbefore recited conveyance of even date herewith, the sd B. received notice of a contingent equitable charge on the sd — estate of the sum of £—, raisable with interest, & payable to such child or children of the late L. as shall attain the age of 21 yrs: AND WHAS the sd L. had 2 children only, namely M. & N., who are minors of the respective ages of — yrs & — yrs or thereabouts; AND WHAS it has been agreed that, for the purpose of indemnifying the sd B., his heirs & assigns, & the sd hds conveyed to him as aforesaid, against the sd contingent charge of £— & interest, in case the same shall become raisable & payable, & from all claims in respect thereof, a sum of £—, part of the sd purchase-money of £—, shall be invested in the names of the sd C., a trustee nominated by the sd A., & of the sd D., a trustee nominated by the sd B., upon the trusts hereinafter declared, & that the sd A. shall enter into the covenants hereinafter contained; AND WHAS immediately before the execution of these presents, the sd B. has, with the approbation of the sd A., invested the sum of £—, part of the sd purchase-money which in the sd conveyance is stated to have been paid to the sd A., in the purchase of the sum of £— 2½ p.c. Consold Stk, in the names of the sd C. & D. NOW THIS INDRE WITNEETH that in pursuance of the sd recited agreement & in consonance of the premises, it is hereby agreed & declared that the sd C. & D., their executors, administrators, & assigns shall stand possessed of the sd sum of £— Stk as a fund for keeping indemnified the sd hds comprd in & conveyed by the sd indre of even date herewith & every part thereof, & the sd B., his heirs & assigns, in respect thereof, against the sd sum of £— & interest charged thereon, & raisable & payable in the events aforesaid, & all sums of money, costs, & expenses, which the sd B., his heirs, executors, administrators, or assigns, may at any time hereafter incur or

Recitals.
Conveyance of even date.
Purchaser received notice of contingent equitable charge.
Persons entitled to charge.
Agreement for indemnifying purchaser.

Investment of part of the purchase-money.

Witnesseth.

Declaration of trust.

To indemnify purchaser.

Further
witnesseth.

Grant.
Parcels.

Haben-
dum.

To use that
purchaser
may receive
rent-
charge.

With
statutory
powers for
recovery
thereof (a).

Subject
thereto to
use of
vendor.

Rent-
charge to
be indem-
nity to
purchaser.

descd in the 1st schdle hto effectly indemnified agst the sd rent-chge, & all claims, demands, costs & expses in respt thof: **AND THIS INDRE FURTHER WITNETH** that in psuance of the sd agrmt, & in conson of the premes, the sd A. doth hby grant unto the sd B. **ALL & SINGR** the sd hds specified in the 2nd schdle hto, To **HOLD** the same premes **Unto** the sd B. & his hrs, to the uses & upon the trusts hinafter decl'd concerng the same, that is to say, To **THE USE** that the sd B., his hrs & assns, may henceforth rece a yrly rent-chge of £——, *the amt of the rent-chge to be indemnified agst*, to be chged upon the sd hds descd in the 2nd schdle hto, & to be payable by qtrly paymts on the —— day of ——, &c., *the days of paymt to be the same as those of the rent-chge to be indemnified agst*, witht any dedon, the first of such paymts to be made on the —— day of —— next; **AND TO THE FURTHER USE** that the sd B., his hrs & assns, shl have all such powers & remedies for the recovery of such rent-chge as are conferred on owners of rent-chges by the Conveg & Law of Ppty Act, 1881, or may orwise by law be available in that behalf, & subj't & chged as afsd To **THE USE** of the sd A., his hrs & assns: **PROVD ALWAYS**, & **IT IS HBY AGRD & DECLD** that the sd yrly rent-chge of £—— hby created, is limd to the sd B., his hrs & assns, to the intent that the same rent-chge & the powers & remedies for the recovery thof may be an indemnity to the sd B., his hrs & assns, & the sd hds descd in the 1st schdle hto agst the sd yrly rent-chge of £—— created by the sd indre of, &c., & all arrears thof, & all powers & remedies for recoverg & enforeg paymt of the same, & all actions, pcdgs, claims, & demands for & in respt of the sd last-mentd rent-chge or any pt thof, for wch ppose it is hby agrd & decl'd that if & whenever within the lives, &c., *as on p. 658 (b)*, any distress or entry for any arrears now due, or hrafter to accrue due, in respt of the sd yrly rent-chge of £—— created by the sd indre of, &c., shl at any time or times hrafter be made upon the sd hds descd in the 1st schdle hto, or any pt thof, or if & whenever during the period afsd any claim or demand for any such arrears shl be

(a) As to the statutory powers of distress, &c., for recovery of a rent-charge, see p. 544, note.

(b) These words are introduced in order to avoid a perpetuity, but consider p. 306, note.

made upon the sd B., his hrs or assns, then the sd B., his hrs or assns, shl apply the sd yrly rent-chge hby created, & all moys reced by him or them under any exercise of the powers & remedies for the recovery thof, in satisfon & dischge of all such arrears or future paymts of the sd rent-chge limd by the sd indre of, &c., & of all costs & expses wch the sd B., his hrs or assns, shl from time to time pay or incur by reason or in consequence of such distress, entry, claim or demand as afsd, or in or about the exon of the powers of these psnts : AND IT IS HBY FURTHER AGRD & decld that, subjt to the indemnity hby provided, the sd B., his hrs & assns, shl stand possed of the sd rent-chge hby created in trust for the sd A., his hrs & assns. In WITS, &c. (c).

And sub-
ject thereto
to be in
trust for
vendor.

[Two schdles.]

IV.

INDEMNITY *against a PERPETUAL RENT-CHARGE by grant of POWER of ENTRY upon part of the LAND Subject to the RENT-CHARGE (d).*

PARTIES, A., vendor, 1 ; B., purchaser, 2 : Recitals as in last Prec. NOW THIS INDRE WITNETH that in psuance of the sd recited agrmt & in conson of the premes, the sd A. doth hby covt with & grt to the sd B., his hrs & assns, that if & whenever during the lives & life of H.M., &c., *see p. 653*, any distress, entry, claim or demand shl be made upon the sd hds specified in the 1st schdle hto, or any pt or pts thof, or upon the sd B., his hrs or assns, in respt of the sd rent-chge of £——, or any pt thof, then & in every such case it shl be lful

Wit-
nesseth.

Power of
entry and
perception
of rents.

(c) Notice of this deed should be endorsed on the last conveyance of the hereditaments in the second schedule, so that purchasers may take with notice. Covenants for title, if any, should be absolute covenants as in a mortgage : the statutory covenants in the Conv. Act, 1881, s. 7 (1, C), may be incorporated as at p. 410, but they do not very well fit the case. For a full form of limitation of a rent-charge, see p. 544.

(d) It is not uncommon to give an indemnity by powers of distress in cases of this kind ; but as that power is probably invalidated by the Bills of Sale Acts it is omitted.

As to
indemnity
by powers
of distress
and entry.

for the sd B., his hrs or assns, to enter into & retain posson of & take the rents & profits of the hds & premes specified in the second schdle hto, or any pt thof (such posson when taken to be witht impeachmt of waste), to the intent that & until by the means afsd or orwise the sd B., his hrs or assns, shl be fully pd & satisfied all sums of moy, costs, damages, & expses wch he or they may have pd or incurred by reason of any such distress, entry, claim, or demand as afsd, or any action or pcdg for recoverg paymt of the sd rent-chge of £— or orwise in relon thto, & also the costs & expses attendg any distress, entry, or pcdg made or taken under the authority of these psnts. In wits, &c. (a).

[Two schdles.]

V.

DEED of INDEMNITY by VENDOR to PURCHASER in respect of DEFECTIVE TITLE, the Indemnity being in the form of ABSOLUTE COVENANTS for TITLE as in a MORTGAGE.

<p>Recitals.</p> <p>Conveyance of even date.</p> <p>Defect in title (b).</p>	<p><i>PARTIES</i>, A., <i>vend</i>or, 1; B., <i>pch</i>aser, 2: WHAS by an indre bearg even date with these psnts, & made, &c., a messe farm & lands known as —, situate, &c., comprisg — acres or thabouts, have for the conson thrin mentd been conveyed by the sd A. to the use of the sd B., his hrs & assns, & in the sd indre the usual qualified covts by the sd A. for title to & further assurce of the premes are implied by law by his being expd to convey as benefl owner: AND WHAS upon the investigon of the title to the sd hds the deeds & docts pdced by the sd A. as evidencg his title thto appeared to show a title to —</p>
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(a) See note on p. 659 as to notice.

(b) The following is a form of recital where the investigation of the title is dispensed with on an agreement that the vendor shall absolutely guarantee it:—

Recital where investigation of title dispensed with.

“AND WHAS upon the sale of the premes to the sd B. an investigon into the title of the sd A. was dispensed with by the sd B., & the sd pchase has been completed upon an agrmt that the sd A. shd give an absolute guarantee of such title, &

acres only, but the whole of the premes conveyed by the sd indre of even date hwith, have for upwards of — yrs past been in the undisturbed ownership & enjoymt of the sd A., or the psons under whom he claims title: AND WHAS the sd B. accepted the title to the premes & completed the pchase thof as afsd upon an agrmt that the sd A. shd enter into absolute covts for the title to & further assurge of the same as hinafter expd, & wch covts are intd to override & be in no wise controlled by the qualified or restricted covts implied in the sd convce of even date hwith as afsd: NOW THIS INDRE WITNETH that, in psuance of the sd agrmt & in conson of the premes, the sd A. hby covts with the sd B., his hrs & assns, THAT, in addon to the qualified or restricted covts by the sd A. for the title to & further assurge of the sd premes wch are implied in the sd convce of even date hwith, the same or the like covts for the title to & further assurge thof shl be deemed to be thby implied on the pt of the sd A., but witht any qualificon or restron as regards the psons to whose acts, defaults, or omissions, such covts extend (c). IN WITS, &c.

Acceptance
of title and
contract
for indem-
nity.

Wit-
nesseth.
Extension
of statu-
tory cove-
nants for
title.

VI.

COVENANT of INDEMNITY by VENDOR to purchaser against certain INCUMBRANCES and DEATH DUTIES.

PARTIES, A., vendor, 1; B., pchaser, 2.

WHAS the estes of the sd A., situate in the coy of —, are now subjt to the sevl legacies, annies, jture, yrly sums, por- tions, & chges specified in the schdle hto: *Convce of even date of, “ farm & hds called the — farm, containg — acres, situate, —, &c., formg pt of the sd estes ” to B. ; AND WHAS*

Recitals.
Incum-
brances.
Conveyance
of even
date.
Agreement.

shd for that ppose enter into absolute covts for the title to & further assurge of the premes in mnner hinafter expd, wch covts are intd to override,” &c., as in the text.

(c) If preferred the covenants may be set out at length as in a mortgage, *mutatis mutandis*; but the mode above adopted seems the best. The statu- tory mortgage covenants in the Conv. Act, 1881, s. 7, do not fit the case, and cannot be made use of.

Covenant
to indem-
nify.

To produce
evidence of
satisfac-
tion.

upon the sd sale it was agrd that the sd A. shd exte & give to the sd B. such indemnity agst the sd incumbces and the duties hinafter mentd as is hinafter contd: NOW THIS INDRE WITNETH that in psuance, &c., & in conson of the premes, the sd A. hby covts with the sd B., his hrs & assns, that the sd A. & his assns will at all times hrafter, well & sufftly indemnify & keep indemnified the sd B., his hrs, exs, ads & assns, & also the sd — farm & every pt thof, agst the paymt of all & singr the sd legacies, annies, jture, yrly sums, portions, & chges specified in the sd schdle hto, & every pt thof resply, & all intt to become due thron resply, & all arrears & growg & future paymts of the sd annies, jture, & yrly sums, & also agst all the duties to become payable on the cesser or satisfon of the sd respive annies, jture & yrly sums, & agst all actions, pcdgs, accts, claims, demands, costs, & expses whatsr, in conseque of the non-paymt of the sd legacies, &c., intt, arrears & growg or future paymts & duties or any of them or any pt thof resply or orwise in relon thto; AND FURTHER, that the sd A., his hrs or assns, will at any time after the sd respive chges & incumbces specified in the schdle hto, or the sd duties shl have been satisfied or dischged, or shl have ceased, at the reqt & cost of the sd B., his hrs or assns, pduce to him or them such evidce of such satisfon, dischge or cesser as shl be in the posson or power of the sd A., his hrs or assns; AND also that, &c., *incumbces & duty to be chged on the rest of A.'s estes in exoneron of the pt sold, see p. 656.* IN WITS, &c.

[Schdle.]

VII.

BOND (a) of INDEMNITY from VENDOR to purchaser where TITLE DEEDS LOST.

Obligon of bond from A. to B., p. 204.

Recitals.

Loss of
deeds.

Recitals of pchase & conrce of even date: AND WHAS the munimts of title [specified in the schdle hto] wch relates to

(a) As to the use of bonds, see p. 204, note.

the premes by the sd recited indre grted & assned respby are stated by the sd A. to have been lost or mislaid : NOW THE Condition.
 CONDON, &c., that if the sd A., his hrs, exs, or ads, shl use his & their best endeavours to discover the sd munimts, & shl, in case the same or any of them shl be found, forthwith deliver the same whole, uncanceled, & undefaced, or in the condon in wch the same shl be found, to the sd B., his hrs, exs, ads, or assns, & if the sd A., his hrs, exs, or ads, shl at all times hrafter keep indemnified the sd B., his hrs, exs, ads, & assns, & all & every pt of the premes by the sd recited indre grted & assned respby agst all mtges & incumbces whatsr in anywise affectg the premes, or any of them, or any pt thof, other than incumbces to be created by the sd B., his hrs, exs, ads, or assns, & agst all actions, pcdgs, claims, & demands, costs, damages, & expses wch may be brought or made agst him or them, or wch he or they may sustain or incur by or by means of any pson or psons who shl or may have or claim any este, title, or intt in or to the premes, or any pt thof, other than psons claimg under the sd B., Then, &c.

[Schdle.]

VIII.

BOND of INDEMNITY to TENANT paying RENT where TITLE in DISPUTE.

Obligon of Bond from A. to B., p. 204.

Recitals.

WHAS an action [dispute] is now pendg betn the above bounden A. & other psons concerng the rt to or intt in the revon of the house & premes situate at, &c., wch are now occupied or held by the above-named B., under a lease thof, dated, &c., & made betn, &c. : AND WHAS the sd B. has nevs Agreement to pay rent.
 agrd to pay the rent of the sd house & premes as the same shl grow due to the sd A. upon the sd A. agreeing to indemnify him in respt thof : NOW, &c., that if the sd A., his hrs, exs, Condition.
 ads, or assns, shl pay to the sd B., his hrs, exs, ads, or assns, all such rent, sums of moy, costs, & damages as the sd B., his

hrs, exs, ads, or assns, shl by due process of law or orwise be compelled to pay, & all costs & damages wch he or they shl orwise sustain by reason of his or their paying the sd rent or any pt thof to the sd A., his hrs or assns, in mner afsd, Then, &c.

IX.

DEED of INDEMNITY by HUSBAND and WIFE to Trustees making an UNAUTHORISED TRANSFER of part of the Settled Funds (a).

PARTIES, A. & B., his wife, 1; C. & D., trees, 2. Recite settlemt on marre of A. & B. of the wife's funds in trust for the wife for life with restraint on anticipon, remr to the issue, & in default of issue for the wife if surviving the husbd absolutely; & if she shd predece him for her testy appteas or next of kin. That

Powers of married women to dispose of reversion of settled funds.

(a) As to the effect of the wife's covenant under the Married Women's Property Acts, 1882 and 1893, see p. 491, note. The wife should make a will under her power of appointment, so that the settled funds (inclusive of the part sold out), may be liable to satisfy the covenant (*Re Parkin*, [1892] 3 Ch. 510); but the appointed fund must necessarily by s. 4 of the above-mentioned Act be liable (irrespective of the terms of the appointment) to satisfy all the debts and engagements of the wife *pari passu*; moreover she cannot bind herself to exercise her testamentary power in any particular way so as to give a right to specific performance (*Re Parkins, ubi sup.*; *Re Anne*, [1894] 1 Ch. 549), or not to revoke the will and not to die intestate. The indemnity therefore, so far as the wife is concerned, is altogether precarious.

Liability of trustees for paying capital monies to woman restrained from anticipation.

Under the old law the payment of the fund to the wife under such circumstances did not disentitle her to call for payment over again in the event of her surviving her husband (even in case of fraud, *Arnold v. Woodhams*, 16 Eq. 29; *Stanley v. Stanley*, 7 Ch. D. 589), since the restraint on anticipation effectually prevented her from giving a valid receipt for the capital of the fund; and even if she were not so restrained, such anticipatory payment would have been invalid on the principle of *Whittle v. Henning*, 2 Ph. 731; but by the Trustee Act, 1893, repealing, and by s. 45 re-enacting the Trustee Act, 1888 (51 & 52 Vict. c. 59), s. 6, the beneficial interest of a married woman may now in such a case be impounded as an indemnity to the trustees, although she is restrained from anticipation; *Griffith v. Hughes*, [1892] 3 Ch. 105; but see *Bolton v. Curre*, [1895] 1 Ch. 544. As to the power of the Court to dispense with the restraint under the Conv. Act, 1881, s. 39, see *Wolstenholme*, C. A. 92; *Hood & Challis*, 105, note; *Re Little*, 40 Ch. D. 418.

there has been no issue, & wife is past the age of child bearg.

AND WHAS the sd trees have at the reqt of the sd A. & B. agrd to sell out the sum of £—— stk formg pt of the sd settled funds, & to pay the proceeds thof to the sd A., on havg such indemnity as is hinafter contd. AND WHAS the sd sum of stk has been sold accdly & the net proceeds thof amtg to £—— have been pd by the sd trees to the sd A., as the sd A. & B. do hby acknowe. NOW THIS INDRE WITNETH that in psuance, &c., & in conson of the premes each of them the sd A. & B. hby covts with the sd C. & D. & each of them & their & each of their exs & ads, that they the sd A. & B. will at all times keep the sd C. & D. & their respive hrs, exs, & ads effectually indemnified agst all claims & demands, actions, & pcdgs on the pt of the sd A. & B., or eir of them, or their or eir of their exs, ads, or assns, or any of them or any other pson or psons whomsor, & all costs, chges, & expses in respt of the sd sum of £—— stk so sold as afsd or the divds or income thof or in any way arisg out of or consequential on such sale & paymt as afsd or orwise in respt of the premes. IN WITS, &c.

Agreement
for trans-
fer.

Sale and
payment.

Wit-
nesseth.

Covenant
of in-
demnity.

X.

DEED of COVENANT and CHARGE by way of INDEMNITY to a
TRUSTEE making an UNAUTHORISED INVESTMENT (b).

PARTIES, A., 1; B., 2: WHAS by virtue of an indre, &c. (being the settlemt exted on the marre of the sd A. with K. his psnt wife) the sum of £ —— ——— Stk (wch was at the date of the sale hinafter mentd standg in the name of the sd B. as the sole tree of the sd settlemt, was settled upon trust among other things that the sd B. shd eir continue the same in its existg state of investmt, or shd, with the consent of the sd A., sell the same, & invest the proceeds thof in any such stks, funds,

Recitals.

Marriage
settlement.

Invest-
ment.

(b) As to the right of the trustee to indemnity from the beneficiary in such a case, see the Trustee Act, 1893, repealing, and by s. 45 re-enacting the Trustee Act, 1888, s. 6. As to the effect of a covenant of indemnity where the trustee is himself a beneficiary, see *Evans v. Benyon*, 37 Ch. D. 329.

Right of
trustee to
indemnity.

Breach of trust. or secs as are thrin mentd ; AND WHAS on the — day of — the sd B., at the reqt of the sd A., sold the sd — Stk for the sum of £ —, & invested such sum in the pchase of bonds of the Governmt of — ; AND WHAS it is apprehended that such sale & investmt were not authorised by the sd settlemt, & were

Agreement. breaches of trust ; AND WHAS the sd A. has agrd to exte & give to the sd B. such covt of indemnity in respt of such sale & investmt as is hinafter contd : *Recite title of A. to* "the ppty mentd in the schdle hto" *subjt to certn prior chges* ; AND WHAS the sd A. has agrd to give to the sd B. such chge upon the sd ppty for the ppose of further securg such indemnity as afsd, as

Wit-nesseth. is hinafter contd : NOW THIS INDRE WITNETH, that in conson of the premes the sd A. hby covts with the sd B., at all times hrafter to indemnify & keep indemnified the sd B., his hrs, exs, & ads, from all actions, pcdgs, claims, & demands, costs, damages, & expses on acct of the sd sale of the sd — Stk, or the sd investmt in bonds of the Governmt of —, or

Covenant to indemnify. orwise in respt of the premes ; AND THE sd A. hby chges ALL the ppty mentd & descd in the schdle hto, & all the este & intt of him the sd A. in the same ppty & premes, & the rents, profits, & income thof (subjt to the incumbces hinfte mentd), with the indemnity of the sd B., his hrs, exs & ads, psuant to the covt in that behalf hinfte contd in respt of the mres refd to in or within the scope of such covt. IN WITS, &c.

Charge.

[Schdle.]

XI.

BOND by LIMITED COMPANY to INDEMNIFY their MANAGING DIRECTOR in respect of GUARANTEES given by him to the Company's BANKERS for ADVANCES (a).

Obligon of Bond from the Co. to A., p. 204.

Recitals. WHAS the sd A., at the reqt of the Board of Dirors of the
Advances. sd — Co Limd (of wch he is managing diror), has signed

(a) Compare Prec., p. 209 ; and as to securities by a company to indemnify the directors in respect of guarantees, see *Re Pyle Works*, (No. 2), [1891] 1 Ch. 173. A principal creditor is not entitled to the benefit of a security given by the principal debtor to a surety, *Re Walker*, [1892] 1 Ch. 621.

or given, & may hereafter from time to time sign or give his promissory note or notes, or some other instrument or instruments to or in favour of Messrs. B. & Co (the bankers of the sd Co) by way of guarantee or collateral security for advances made, or to be from time to time made by the sd bank to or on account of the sd Co, or for or in respect of other pecuniary accommodation to be from time to time afforded by the sd bank to the sd Co: AND **Agreement.**

WHAS the sd Co at the request of the sd A., & as an inducement to him to undertake such personal responsibility on behalf of the sd Co as aforesaid, have agreed to give him their bond in a sufficient penalty for the purpose of indemnifying him in respect of the liability so assumed & to be assumed by him on behalf of the sd Co as aforesaid, in addition to any other remedy or security to which the sd A., his heirs, executors, or administrators, may be or become entitled as such surety or guarantor as aforesaid: NOW, &c., that if the sd **Condition.** Co shall on demand repay & make good to the sd A., his heirs, executors, or administrators, all & every the sum & sums of money which he or they shall at any time or times hereafter pay to the sd bank, or any person or persons whomsoever by reason or in respect of any promissory note or notes, guarantee or guarantees, or other instrument or instruments already signed or given, or to be hereafter from time to time signed or given by the sd A., to or in favour of the sd bank, on account of advances made, or to be made, or bills discounted or to be discounted by them to or on account, or for the accommodation of the sd Co, or any other pecuniary accommodation which may be afforded by them to the sd Co, & shall at all times hereafter keep the sd A., his heirs, executors, & administrators, fully indemnified against all actions, proceedings, claims, demands, costs, & expenses, by reason or in respect of any such promissory note or notes, guarantee or guarantees, or other instrument or instruments to be signed or given by the sd A. as aforesaid, & so that the above written bond or obligation shall be & remain a continuing security to the sd A., his heirs, executors, & administrators, in respect of the matters aforesaid, notwithstanding any change in the partners or members of the sd banking firm, & shall not be deemed to be satisfied, or become inoperative, by reason of the cession at any time of the guarantees given by the sd A. as aforesaid, but shall continue in force or revive in the event of any subsequent renewal thereof, Then, &c.

XII.

**DEED of INDEMNITY, by a Husband & Wife, by way of
Covenant and Charge, against using NAME as Co-
PLAINTIFF.**

Recitals.	<i>PARTIES</i> , A. & B. his wife, 1 ; C., 2 : WHAS the sd A. & B.
Action com- menced.	his wife, on or about the — day of —, instituted an action in the — Divon of the High Ct of Justice in the names of the sd A., B., & C., as plts agst D. as deft, & thby claimed specific pformce of a contract for the sale by the plts
Use of C.'s name.	to the dft of certn hds, known as the — este ; AND WHAS the name of the sd C. as such co-plt was used witht any express authority from him, but he is willg that his name shd be continued as such co-plt in the sd action, on his being
Title to property.	indemnified agst all consequential costs ; AND WHAS the sd B. is entled, subjt to the sd contract for sale, to the sd — este in fee simple, & to the proceeds of the sale thof, for her sole & septe use : NOW THIS INDRE WITNETH that in conson
Wit- nesseth.	of the premes each of them the sd A. & B. his wife, hby covts with the sd C., his exs & ads, that they the sd A. & B., & their respive hrs & exs, will at all times hrafter keep in-
Covenant of indem- nity.	demnified the sd C., his hrs, exs, & ads, agst all costs, damages, & expses to be incurred in conseqce of the sd action, or anything in anywise relatg thto : AND THE SD B. hby chges
Charge of property.	the sd — este, & the proceeds of the sale thof, with the paymt to the sd C., his hrs, exs, & ads, of all such costs, damages, & expses as afsd. IN WITS, &c.

XIII.

BOND of INDEMNITY on PAYMENT of LOST BOND.

Obligon of bond from B. to A., p. 204.

Recitals.	<i>Recital of bond from A. to B., p. 360</i> : AND WHAS the sd
Bond lost.	bond is alleged to be lost or mislaid ; AND WHAS the sd A., at
Agreement.	the reqt of the sd B., has this day pd to him the sum of £—

in full satisfson of all claims under the sd bond (as the sd B. doth hby acknowe) upon the sd B. agreeing to exte to the sd A. a bond of indemnity in respt of the sd recited bond ; NOW, Condition. &c., that if the sd B., his hrs, exs or ads, shl, in case the recited bond shl be found & shl be in or come into his or their posson or power, deliver the same to the sd A., his exs or ads, in order that the sd bond may be destroyed or cancelled, & shl at all times hrafter indemnify & keep indemnified the sd A., his hrs, exs & ads, agst all damages, costs, expses, actions, pcdgs, claims, & demands, wch he or they may or might orwise at any time incur, or be liable to, under, or by reason of the sd recited bond, Then, &c.

LEASES (HOUSES), &c. (a).

INTERPRETATION CLAUSE (b).

THIS INDRE, made, &c., betn A., of, &c. (hinafter called the lessor, wch expression shl include his hrs & assns, *or, for*

Stamps.

(a) The forms under this head are for ordinary occupation and building leases and leases for business purposes. For agricultural and mining leases, see *infra*; and for variations for leases under powers and other special cases, see LEASES, MISCELLANEOUS. As to Stamps, see the Stamp Act, 1891, schedule, tit. Lease.

As to use of words "lessor" and "lessee," &c., and interpretation clause.

(b) In accordance with the now very common practice the plan is adopted throughout the following forms of leases and agreements for leases of using the words "lessor" and "lessee," or "landlord" and "tenant," in place of the names of the parties, the former expressions being more commonly used in leases (though they are open to some objection on account of the risk of clerical errors which the similarity of the words involves), the latter in agreements for leases. These expressions may be made to include the reversioner and the termor for the time being respectively by an interpretation clause placed at the beginning or end of the instrument, so as to enable the words "heirs and assigns," or "executors, administrators, and assigns," or other like words, to be omitted throughout in the case of both the lessor and the lessee.

Benefit of lessee's and obligation of lessor's covenants annexed to reversion.

By the Conv. Act, 1881, s. 10 (extending 32 Hen. 8, c. 34), the benefit of the rent and lessee's covenants and conditions in a lease is annexed to and to go with the reversion expectant on the term (notwithstanding severance of the reversion), and may be taken advantage of by the person from time to time entitled to the rents and profits of the land; and by s. 11 the obligation of the lessor's covenants, so far as he has power to bind the reversion, is annexed to and goes with the reversion (notwithstanding severance thereof), and may be enforced by the person in whom the term is from time to time vested (see as to the previous law the notes to *Spencer's Case*, 1 Smith's L. C. 72 *et seq.*); see also the general enactment in s. 58, making the benefit of covenants relating to land run with the land although the "heirs and assigns," or "executors, administrators, and assigns" (as the case may be) of the covenantee are not expressed, where it would so run if those words were expressed.

The effect of these enactments appears to be in all cases, whether the lease is granted by an owner or under a power, to carry the benefit and obligation of the lessor's covenants and the benefit of the lessee's covenants

an underlease, or a lease of chattels, "his exs, ads & assns," or for a lease of any ppty under a power, "the pson or psons from time to time entled to the revon of the premes hby demised expectant on the termh by grtd" (where the context so admits)), of the one pt, & C., of, &c. (hinafter called the lessee, wch expression shl include his exs, ads & assns, where the context so admits) of the other pt.

to the reversioner and lessee respectively for the time being, as the case may be, irrespective of the form of the covenants, and to prevent technical objections arising in future in this respect; but it is still necessary that the lessee should covenant for his "assigns" in those cases in which this was previously necessary to make the obligation of his covenants run with the land (see the notes to *Spencer's Case*, 1 Sm. L. C. 72 *et seq.*), and also that the lessor should so covenant where his covenants are intended to bind future owners of adjoining land belonging to him; these cases not being covered by the above enactments. With these exceptions, the repetition throughout of the words "and assigns" or "executors, administrators, and assigns," or other like expressions, is superfluous so far as regards making the covenants run with the land; but sometimes (*e.g.*, in providing by and to whom notices or licences are to be given) the words appear to be required. The most convenient plan, which is adopted in this edition, is to imply these words by means of an interpretation clause, and they are therefore for the most part omitted throughout the following forms of leases and agreements for leases, except that at the commencement of the covenants the lessee, and also where appropriate the lessor, is made to covenant expressly "for his assigns." The mention of the "heirs, executors, and administrators" of the covenantor is unnecessary (see Conv. Act, 1881, s. 59).

Covenants for "assigns."

The above is a form of interpretation clause when placed at the commencement of the instrument, which is the better plan. A form of clause to be placed at the end will be found *infra*. The above forms defining "lessor" are not adapted to a lease by mortgagor and mortgagee, or by a mortgagor under a power in the mortgage or the Conv. Act, 1881, s. 18, since where the property is in mortgage it is usually intended that the mortgagor should act in all respects as the lessor until the mortgagee enters into the receipt of the rents or sells or forecloses (see as to this the Judicature Act, 1873, s. 25 (5)). In this case a special form of interpretation clause must be used; the most convenient plan seems to be to define the "lessor" as including "the pson or psons for the time being entled to rece the rent[s] hby reserved," care being taken to reserve the rents generally, not to "the lessor" expressly. This form might probably, in fact, be adopted as the common form for use in all cases.

Variation for property in mortgage.

For other forms of commencement adapted to various special cases, see *post*, LEASES, MISCELLANEOUS.

The following forms for leases of "HOUSES, &c.," and "AGRICULTURAL," are mostly for one lessor and one lessee. The alterations required for several will be in general merely the substitution of the plural number. See also MISCELLANEOUS FORMS, *post*, p. 842.

CONSIDERATION.

- | | |
|--------------------------------|---|
| Rent and covenants. | I. IN CONSON OF THE RENTS & COVTS, ON THE PT OF THE LESSEE, hinafter reserved & contd. |
| Premium and rent, &c. | II. IN CONSON OF THE SUM OF £—— now pd by the lessee to the lessor (the rect whof is hby acknowledged) & of the rents & covts, &c. |
| Surrender of former lease, &c. | III. IN CONSON OF THE SURRENDER OF A FORMER LEASE OF THE HDS hby demised, dated, &c., & made betn, &c. (a), & of the rents & covts, &c. |

PARCELS (b).

- | | |
|---|--|
| House in town. | I. ALL that messe or tenemt situate & known as No. —— in —— Street, in the parish of ——, in the coy of ——, togr with the yard, garden, & outbldgs thto belonging, now or late in the occupon of ——. |
| House, &c. referring to plan. | II. ALL that pce of ground, situate, &c., with the messe or tenemt & bldgs erected on pt thof, wch premes are shown on the plan drawn in the margin of these psnts & thrin coloured ——. |
| House or offices with fixtures, &c. | III. ALL that messe, &c., or “all those three rooms or offices nod, &c., on the —— floor of the bldg,” No. ——, in —— Street, &c., togr with the fixtures & fittgs specified in the schdle hto, & all other (if any) fixtures & fittgs belonging to the lessor in or upon the premes. |
| Land referring to plan. | IV. ALL that pce of land situate at, &c., on the —— side of the road leadg from, &c., & wch, as to its position, dimensions, & boundaries, is parlarly shown in the plan drawn in the margin of these psnts, & thrin coloured ——. |
| Land and buildings with dimensions in feet. | V. ALL that pce of ground situate & being on the north side of —— Street, in the parish of ——, & coy of ——, containg |

Surrender of old lease.

(a) The acceptance of a new lease would imply a surrender, so as to save the expense of an express surrender, where the new lease is of the property comprised in the old lease and to the person entitled to it for the residue of the term: see *Davison d. Bromley v. Stanley*, 4 Burr. 2210; *Lyon v. Reid*, 13 M. & W. 285; 37 Sol. J. 539. As to the power of limited owners to take the value of a surrendered lease into account on granting a new lease, see the Settled Land Act, 1882, s. 13, sub-ss. (1) and (5).

(b) See also the forms of parcels in CONVEYANCES ON SALE, p. 377 *et seq.*

in breadth as well on the south side or front thof next — Street afsd as on the north side or rear thof — feet, & in length as well on the west as on the east side thof — feet, be the same sevl dimensions little more or less, & wch sd pce of ground is bounded on the south by the sd street, on the north by land of, &c. &c. Togr with the messes & bldgs erected on the sd pce of ground, *or*, “ togr with the messe or tenemt & other bldgs now built or in course of bldg or wch shl or may during the term hby grted, be erected or built on the sd pce of ground or any pt thof.”

VI. ALL that messe, &c., togr with the use in common with the other tenants of the lessor, *or*, “ in common with the other psons entled thto,” & under reasble regulons & restrons imposed by the lessor, of the ornamental garden in front of the sd messe & premes hby demised.

House with use of public garden.

VII. TOGR with the rt in common with the lessor, & the tenants or occupiers of the adjoining premes on the east side of the sd premes [*or*, in common with the other psons havg the like rt] to the use of the roadway or passage on the east side of the sd premes leadg from the public road or street called — street to, &c., the lessee from time to time contributg a due proportion [accdg to the extent of his frontage], *or*, “ an eql — pt,” of the expses of repairg & maintaing the sd roadway or passage.

Right of way.

VIII. TOGR with the exclusive use & enjoymt for the lessee of the sd way or passage of the width of — feet leadg from the yd or back pt of the sd demised premes into — street afsd.

The same. Another form.

IX. TOGR with the free rt of passage at all times & for all pposes to & from the sd demised premes over the sd road or way leadg from, &c., & over all other neighbourg roads or ways belonging to the lessor.

The same. Another form.

X. TOGR with the free rt of passage & runng of water & soil from the sd demised premes through the sewer or drain runng under the sd road, &c. [all sewers, drains, & watercourses now or hrafter made or passg under or along any of the sd roads].

Right of drainage.

XI. TOGR with the rt to the free & uninterrupted access of

Right of light and air (c).

(c) See *Potts v. Smith*, L. R. 6 Eq. 311; *Aldin v. Latimer*, [1894] 2 Ch. 437; *Chastey v. Ackland*, [1895] 2 Ch. 396.

light & air to the windows & openings now existg in the sd demised premes from over the houses & land of the lessor, situate on the east side thof.

GENERAL WORDS (a).

TOGR with all ways, passages, [lights], drains, sewers, watercourses, rts, easemts, & appurts, *or*, "the rts, easemts, & appurts," to the sd premes belonging or thwith usually held or enjoyed.

RESERVATIONS (b).

Right of
drainage
(c).

I. EXCEPT & reservg unto the lessor (d) the free & uninterrupted passage & runng of water & soil from the other

As to
general
words.

(a) The insertion of general words in leases as well as other conveyances is rendered unnecessary by the Conv. Act, 1881, s. 6; see the definition of "conveyance" in s. 2; and as to general words, see above, p. 391, note. Questions under this head seldom arise except where the lessor has other adjoining property. As to when a quasi easement over other property of the lessor will pass as an "appurtenance," see *Thomas v. Owen*, 20 Q. B. D. 225. That the implication of a grant of an easement (such as light), over the lessor's other property, which is necessary to the full enjoyment of the demised property may be negatived by the circumstances, see *Birmingham, &c., Banking Co. v. Ross*, 38 Ch. D. 295. As to the right to support which is implied in a lease of building land, see *Rigby v. Bennett*, 21 Ch. D. 559.

As to all
the estate
clause.

By s. 63 of the Conv. Act, 1881, a "conveyance" (which by s. 2 includes a lease) passes "all the estate" of the conveying parties, unless a contrary intention is expressed, which it of course is in a lease by the habendum.

As to
reserva-
tions.

(b) See *Elph. Intro.* 246. As to reservations of easements, see *Lord Dynevor v. Tennant*, 13 App. Cas. 279. The reservation of a power to the lessor to enter and execute works under the Public Health Acts, or other like Acts, may sometimes be desirable; see *Parker v. Inge*, 17 Q. B. D. 584. As to the necessity for sometimes reserving rights required for use with adjoining property, see *Rigby v. Bennett*, 21 Ch. D. 559 (building land, digging foundations); *Martin v. Spicer*, 34 Ch. D. 1; 14 App. Cas. 12 (right of lessee to interfere with management of other property as to terms of letting).

(c) As to the extent of this reservation, see *Chadwick v. Marsden*, L. R. 2 Ex. 285.

(d) In an underlease, say, "lessor & the superior landlord of the sd premes."

bldgs & land of the lessor (e), & his tenants, adjoining or near to the sd premes hby demised, through the sewers, drains, & watercourses, wch are now or may hrafter durg the term hby grted be in or under the sd demised premes.

II. EXCEPT & reservg unto the lessor (e), the use at all times & for all pposes in common with the lessee, of the passage of the width of ——— feet leading from, &c. to, &c. Right of way (f).

III. EXCEPT & reservg unto the lessor all timber & timber-like trees now standg or growg or hrafter to be standg or growg upon the sd demised land or any pt thof, & all mines, minls (g), & quarries, in, upon, or under the same, but witht power for the lessor to cut down or remove any such timber or trees, or to dig for or work such mines, minls, or quarries, except with the consent in writg of the lessee [*or, with full power for the lessor to enter upon the sd demised premes, & to cut, dig, search for, work, quarry, & carry away the same, but not so as to interfere with the bldgs standg thron, or to occasion any unnecy damage to the lessee, & so that the lessee shl be fully compensated for all damage thby occasd*]. Timber and minerals.

IV. SUBJT to all rts & easements belonging to any adjacent ppty. General rights (h).

V. SUBJT to the rt wch is hby reserved to the lessor & his tenants at any time hrafter to rebuild or alter any of the adjoining or neighbourg bldgs accordg to such plans (whether as to height, extent, or orwise), & in such mner as shl be approved by the lessor's surveyor, notwg any interference thby occasd to the access of light or air to the premes thby demised. Right to rebuild or alter adjacent buildings.

(e) See note (d), previous page.

(f) For other forms of reservations of rights of way, see p. 390 *et seq.*

(g) As to what is included in a reservation of minerals, see *Tucker v. Linger*, 8 App. Cas. 508.

(h) As to the circumstances under which a reservation to the lessor of an easement or right necessary to support a previous lease or grant of adjoining property to another person may be implied, see *Thomas v. Owen*, 20 Q. B. D. 225. Reserva-
tion of
easement.

HABENDUM.

Ordinary
form.

I. To hold the premes hby demised unto the lessee from the — day of —, 18—, *or*, “from the day of the date of these psnts,” *or*, “from the — day of — now last past,” for the term of — yrs [subj to the sub-tenancies in the schdle hto mentd] *or*, “from yr to yr,” for an underlease say “for the residue of third term of — yrs, except the last — days thof.”

Partner-
ship
premises.

II. To hold the premes hby demised unto the lessees as jt tenants as pt of their co-ptnp este, from, &c.

REDDENDUM.

Reserva-
tion of
rent (a).

I. PAYING therefor yrly durg the sd term hby gted, *or*, “the sd tenancy,” & so in proportion for any less time than a yr (b), [unto the lessor (c)], the rent of £—— to be pd (d) wtht any dedon (except for [land tax (e) &] landlord’s ppty tax) by eql

Distress.

(a) As to the power to distrain for rent, see the Law of Distress Amendment Act, 1888 (51 & 52 Vict. c. 21); and as to bankruptcy, see the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 42, as altered by the Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 28; and as to companies in liquidation, see the Companies Act, 1862, s. 163. As to agricultural holdings, see the Agricultural Holdings (England) Act, 1883 (46 & 47 Vict. c. 61), Part II., as altered by 51 & 52 Vict. c. 21.

(b) When these words are inserted it is unnecessary to insert form No. VI., *post*. As to the apportionment of the liability to the rent where the lease is assigned between two rent-days, see *Swansea Bank v. Thomas*, 4 Ex. D. 94.

Reserva-
tion of
rent.
Effect of
Conv. Act,
1881.

(c) It is sufficient to reserve the rent generally without specifying to whom; this was so before the Conv. Act, 1881 (see *Elph. Introd.* 250), and now by that Act, s. 10, the rent reserved by a lease is in all cases expressly annexed to the reversion, see above, p. 670, note. As to the case where the reversion is in mortgage, see the Judic. Act, 1873, s. 25 (5). The words in brackets may therefore be omitted, and in the case of a lease under a power or by several lessors having various interests, it is better to do so, unless “lessor” is defined to include the reversioner or reversioners for the time being, see p. 671, note.

(d) If several rents are reserved, say, “all wch rents or sums hinfte reserved or made payable as rent shl be pd,” &c.

As to land
tax and
tithe.

(e) As to the right to deduct land tax, see *Andrew v. Hancock*, 1 B. & B. 37. A provision that the tenant may deduct the tithe rent-charge is now

qtrly [half-yrly] paymts on the — day of —, &c., or, “on the four usual qtr days,” in every yr the first of such paymts to be made on the — day of — next (*f*), [& the last pymt to be made in advce one calr month bfe the expiron of the sd tenancy or immedly on the determinon thof in the event of the same being determined by re-entry under the provo in that behalf hinafter contd].

II. PAYING, &c., *as above*, the rent of £— to be pd in advce witht any dedon (except, &c.), by four eql qtrly paymts, the first of such paymts for the qtr endg on the — day of — next to be made on the exon of these psnts, & the subseqt paymts to be made in advce for each qtr on the — day of —, &c.

Rent payable in advance (*g*).

III. PAYING, &c., the respive rents follg (that is to say, durg the first & second yrs of the sd term the yrly rent of £—, & durg [the next — yrs of the sd term the yrly rent of £— & durg] every subseqt yr of the sd term the yrly rent of £—, such respive rents to be pd witht any dedon (except, &c.) by eql qtrly [half-yrly] paymts, &c.

Varying rent (*h*).

IV. PAYING, &c., durg the first — yrs of the sd term the

Peppercorn rent.

unnecessary and out of place, as the tithe is under the Tithe Act, 1891 (54 Vict. c. 8), s. 1, leviable against the landlord and not the tenant, and any contract made after the Act making it payable by the tenant is void.

(*f*) If the lease is not executed till after its commencement and some rent has already become due and been paid, say, “the first of such paymts after the date of these psnts in respt of the now current half yr [qtr] to be made on the — day of — next,” or add: “Provd that the rent already pd by the lessee in respt of his occupon of the premes since the — day of — shl be in satisfon as far as the same extends of the rent already accrued due under this demise.”

As to rent already paid.

(*g*) As to the right to distrain for rent payable in advance, see *London, &c. Loan, &c., Co. v. London & North-Western Ry. Co.*, [1893] 2 Q. B. 49; *Shackell v. Chorlton*, [1895] 1 Ch. 378.

(*h*) Where the lease is of settled land under a power (express or statutory) requiring the best rent to be reserved, an increasing rent cannot be reserved unless expressly authorised (*Re Hallett*, 24 Ch. D. 624), the objection being that if the next remainderman is a tenant for life, this might operate to his prejudice; and *à fortiori* a diminishing or fluctuating rent would be bad. In the case of building leases a peppercorn rent, or other rent less than the full rent, may be reserved during the first five years or any part thereof, under the Settled Land Act, 1882, s. 8 (2).

As to varying rent in lease under power.

rent of a peppercorn if demanded, & durg the residue of the sd term the yrly rent of £——, such last-mentd rent to be pd witht any dedon (except, &c.) by eql qrtly [half-yrly] paymts, on, &c., & the first paymt thof to be made on, &c.

Separate rent for each house in lease of several houses.

Proportionate rent on term ceasing by re-entry or notice.

Insurance rent (b).

Penal rent on breach of covenant (c).

As to penal rents.

v. PAYING, &c., the rent of £—— for each of the sd six messes hby demised, makg an aggregate yrly rent of £—— for all the sd messes & premes, to be pd, &c.

vi. AND also paying in the event of the sd term being determined betn two of the sd qrtly [half-yrly] days by re-entry [or notice] under the provo [respive provoos] in that behalf hinafter contd, a proportionate pt of the sd rent for the fraction of the current qtr [half-yr] forthwith on such determon (a).

vii. AND also paying by way of further or addonal rent from time to time a sum or sums of moy eql to the amt wch the lessor may expend in effectuatg or maintaing the insce of the sd premes agst loss or damage by fire [or accident] as hinafter mentd; such last-mentd rent to be pd witht any dedon on the qtrly [half-yrly] day for paymt of the rent next ensuing after the expenditure thof.

viii. AND also if & so often as the lessee shl, contrary to his covts in that behalf hinafter contd, *here specify breaches of cort to be guarded agst*, then & in any & every such case paying durg the then residue of the term hby grted as a further rent the yrly sum of £——, every such addonal rent to commce from the day on wch the breach of covt in respt whof the same is payable as afsd shl happen, & to be payable thenceforth qtrly

(a) See the Apportionment Act, 1870 (33 & 34 Vict. c. 35), ss. 2 and 3.

(b) This is probably effectual as a means of obtaining the right of distress, being as it seems not affected by the Bills of Sale Acts.

(c) It used to be considered that on payment of the increased rent the lessee was at liberty to do the act on which it became payable, so as to prevent the landlord from entering for breach of covenant; but where, as in the text, the acts in question are treated in the reddendum as breaches of covenant, it is now decided that the effect is to give alternative remedies to the lessor either by ejectment for breach of covenant, or injunction or recovery of the penal rent: *Weston v. Managers of the Metropolitan Asylums District*, 8 Q. B. D. 387; 9 Q. B. D. 404; see *Elph. N. & C. Interp.*, pp. 430 *et seq.* Possibly the reservation of penal rents may become more common now that the lessor's power of re-entry for breach of covenant is restricted by the Conv. Act, 1881, s. 14; see 26 Sol. J. 489. No additional stamp is required in respect of a penal rent, see the Stamp Act, 1891, s. 77 (1).

[half-yrly] witht dedon in the same mner as the sd origl rent of £——.

IX. AND also as a further rent the sum of £—— in any & every *week* in wch the lessee shl break or fail to pform or observe any of the covts & condons hinafter contd & on his pt to be pformed or observed, such last-mentd rent to commce on the day on wch such breach, non-pformce, or non-observece shl first happen, & to continue payable until the lessee shl specifically pform or observe & pay full damages & compenson to the satisfon of the lessor for the breach, non-pformce or non-observece of any of such covts or condons, such last-mentd rent to be pd *weekly* witht any dedon.

Penal rent in respect of any breach of covenant.

LESSEE'S COVENANTS.

I. AND the lessee doth hby for himself, & his assns, covt with the lessor (*d*) in mner follg, that is to say:—

Commencement.

II. AND the lessees do hby for themselves, & their assns [& as a septe covt each of them doth hby for himself, & his assns] covt with the lessor in mner follg, that is to say:—

The same for several lessees (*e*).

III. THAT the lessee will, durg the continue of the term hby grted, pay unto the lessor (*f*) the sd yrly rent [respive yrly & other rents or sums of moy] hinbfe reserved & made payable at the times & in the mner at & in wch the same is [are respily] hinbfe reserved & made payable witht any dedon (except as afsd).

To pay rent.

IV. AND also will from time to time, & at all times durg the

To pay rates and taxes (*g*).

(*d*) As to the statutory enactments making the benefit and burden of the lessee's covenants run with the land, and the wording of the covenant, see p. 670, note. As to the frame of the covenants to be entered into by the executors of a person who has agreed to take a lease, but died before completion, see *Stephens v. Hotham*, 1 K. & J. 571.

(*e*) In a lease to several, whether as joint tenants or in common, it should be clearly expressed whether they are to be liable severally as well as jointly; as to the law on this subject, see *White v. Tyndall*, 13 App. Cas. 263; Elph. N. & C. Interp., p. 434.

(*f*) The words "unto the lessor" are unnecessary, and perhaps better omitted; see p. 670, note (*b*).

(*g*) See Elph. Introd. 254. This covenant includes charges for drainage, paving, &c., imposed by local authorities under the Public Health or drainage

As to drainage

sd term, pay & dischge all rates, taxes, chges, assessmts, & outgoings whatsr, whether parliamentary, parochial, local, or of any other descripon, wch are now or may at any time hrafter be assessed, chged, or imposed upon the sd demised premes, or the owner or occupier in respt thof, the [land tax (a) &] landlord's ppty tax only excepted.

To pay
lessor's
costs of
proceedings
under
Conv. Act,
1881, s. 14
(b).

v. AND also will pay unto the lessor all costs, chges & expses, includg legal costs & fees payable to a surveyor, wch may be incurred by the lessor in or in contemplon of any pedgs under the 14th section of the Convcg & Law of Ppty Act, 1881.

To paint
outside
every three
years.

VI. AND also will [in the yr — & thrafter] once in every three yrs of the sd term [& also durg the last yr thof] (c) paint the outside wood & iron [& stucco or cement] work of the sd demised premes [& any addonal bldgs wch may at any time durg the sd term be erected thron, or, "& all addons thto" (d)] with two coats of good oil & white-lead paint in a pper & workmanlike mner.

and paving
charges.

Metropolis Management Acts: *Budd v. Marshall*, 5 C. P. D. 481; *Aldridge v. Ferne*, 17 Q. B. D. 212; *Batchelor v. Bigger*, 60 L. T. 416; W. N. 1889, 51; *Smith v. Robinson*, [1893] 2 Q. B. 53; in a short tenancy, therefore, they should be excluded by excepting "any sums recoverable from the lessor by any local or other public authority under the provisions of the Public Health Acts," or as the case may be; see *Allum v. Dickinson*, 9 Q. B. D. 632; *Wilkinson v. Collyer*, 13 Q. B. D. 1, where the form of the covenant was different; *Re Crawley*, 28 Ch. D. 431. Such a covenant by the landlord does not include water rate, *Badcock v. Hunt*, 22 Q. B. D. 145.

(a) As to tithe, see p. 676, note (e).

(b) See *Skinnners Co. v. Knight*, [1891] 2 Q. B. 542. The Conv. Act, 1892, s. 2, appears not to entitle the lessor to recover his costs of employing a solicitor or surveyor in case the lessee avoids the forfeiture by complying with the notice. It is by no means certain that assigns of the lessee are bound to perform this covenant.

Variations
as to
outside
painting,
&c.

(c) The following addition may occasionally be proper here:—"at the same time as & so as to correspond with the adjoining houses:" or "in such month as shl be from time to time appted by the lessor in that behalf;" and the following may sometimes be added at the end of the covenant:—"& of a tint or colour to be approved by the lessor, & recolour in imiton of stone the outside stucco or cement work, & once in every seven yrs of the sd term clean & repoint the external stone & brickwork of the premes."

(d) As to the importance of the words in brackets, see *Cornish v. Claije*, 3 H. & C. 446.

VII. AND also will [in the yr — & thrafter] once in every seven yrs of the sd term [& also durg the last yr thof] paint all the inside wood & iron work usually painted of the sd demised premes [& any such addonal bldgs as afsd, *or*, “& all addons thto” (e)] with three coats of good oil & white-lead paint in a pper & workmanlike mner (f).

To paint inside every seven years.

VIII. AND also will paint with two coats of good oil colour all the inside & outside wood & iron work of the sd premes [& all addons thto (e)] as often as the same shl be required.

To paint inside and out when required.

IX. AND also will from time to time, & at all times durg the sd term, well & substantially repair, cleanse, maintain, amend, & keep the sd messe & bldgs & [all new bldgs wch may at any time durg the sd term be erected on & all addons made to the sd demised (e)] premes, & the fixtures thrin, & the walls, fences, vaults [roads, sewers], drains, & appurts thof with all necy reparons, cleansgs, & amendmts whatsr (g).

Short form.

To keep in repair, with variations.

(e) See note (d), p. 680.

(f) The following addition may sometimes be proper:—“& aftwds grain, marble, & varnish the pts usually grained, marbled, & varnished, & also wash, distemper, & whiten all ceilgs, & colour all walls, & re-paper the rooms & staircase, & size & varnish the staircase paper in the usual mner.”

Addition to covenant to paint.

(g) The following addition may sometimes be desirable:—“AND also will, when & so often as any fixtures belonging to the premes shl so require, substitute other fixtures of a similar descripon & value to the satisfon of the surveyor of the lessor.” The covenant may sometimes require to be qualified by adding:—“except substantial repairs to the main walls, roof, foundons, & main drains,” or, “except such repairs as are hby agrd to be exted by the lessor,” or, “except in case of destron or damage by fire.” In cases where the property is in a defective state it may be well, if so intended, to insert the following qualification:—“except such defective portions of the sd premes as are mentd in the schdle hto, wch it shl not be incumbent on the lessee to keep or deliver up in a better state of repair than at psnt;” or a proviso that, “the covt hinbfe contd for the repair of the sd premes shl not render it incumbent upon the lessee to keep or deliver up the sd premes or any pt thof in a better state of repair or condon than the same are in at psnt.”

Qualifications of covenant to repair.

The principles governing the construction of the ordinary repairing As to effect

The same.
Short
form.

X. AND also will durg the sd term keep all the sd premes & the fixtures, paintg, paperg & decorons thof in good & tenantable repair, order & condon internally & externally.

To main-
tain gar-
dens and
pleasure-
grounds,
&c.

XI. AND also will at all times durg the sd term maintain the gardens & pleasure-grounds of the sd premes in good order, & pperly planted, & carefully preserve the timber-trees, & all ornamental & fruit trees, bushes & shrubs, wch are now or may at any time durg the sd term be growg on the sd premes, & replace such of the shrubs & plants as may die, or require replacg.

To execute
works
required
by local
authority.

XII. AND also will exte all such works as are or may under or in psuance of any Act or Acts of Parliamt already passed or hrafter to be passed be directed or required by any local or public authority to be exted at any time durg the sd term upon

of covenant
in lease of
old house.

covenants in leases, such as a covenant to keep in "tenantable repair," or (which is substantially the same thing) in "good repair," were considered, and the prior cases discussed, in *Proudfoot v. Hart*, 25 Q. B. D. 42, by the Court of Appeal, by whom the law was laid down (in a manner differing materially from the rules enunciated in the Court below) to the effect, which seems reasonable, that the lessee under such a covenant is bound to keep the house in and, if need be, put it into such repair as makes it reasonably fit for occupation by the class of tenants who would be likely to take it, regard being had to its age and character, although this may involve putting an old house into better repair than it was in at the commencement of the lease, even to the extent of having to renew any part which is past repair; but if the house can be made fit for such occupation by merely patching up defects, the tenant is not bound to do more. In *Lister v. Lane*, [1893] 2 Q. B. 212, it was held by the Court of Appeal that if the defect is an inherent one caused by original faulty construction, the lessee would not be liable to make it good under such a covenant. See also as to "tenantable repair," *Crawford v. Newton*, 2 Times L. R. 877; and as to the measure of damages for breach of a covenant to repair, *Morgan v. Hardy*, 17 Q. B. D. 770; *Henderson v. Thorn*, [1893] 2 Q. B. 164.

As to
excepting
fair wear
and tear.

The qualification "fair and reasonable wear and tear excepted" is occasionally required, and frequently finds its way even into repairing leases, but as it goes far to nullify the covenant, it is obviously contrary to the intention in that case, and the practitioner should be cautioned against allowing its insertion. In *Davies v. Davies*, 38 Ch. D. 499, it was held that a tenant for years is liable for permissive waste, and that where a lease is granted under a power requiring that the lessee should not be made unimpeachable for waste, the introduction into the repairing covenant of an exception of "fair wear and tear and damage by tempest," invalidates the lease. This would seem to apply equally to the ordinary agreement for a yearly tenancy. It clearly applies to a lease granted under the Settled Land Act, 1890, s. 7; but a lease granted under the Settled Land Act, 1882, s. 6, although "involving waste," would not be open to this objection.

or in respt of the sd demised premes whether by the landlord or tenant thof.

XIII. AND also will at all times durg the sd term [pay & contribute a rateable or due proportion of the expses] *or*, "bear & pay all costs & expses payable eir by landlord or tenant in respt of the premes hby demised," of makg, repairg, maintaing, rebldg, & cleansg all ways, roads, pavemts, sewers, drains, pipes, water-courses, pty-walls, pty structures, fences, or other convenices, wch shl belong to or be used for the sd premes hby demised [or any addonal bldgs wch may be erected as afsd] in common with other premes near or adjoining thto, such proportion [in case of diffce to be settled by the surveyor for the time being of the lessor, whose decision shl be final, &] to be pd to the lessor on demand (a), & will keep the lessor indemnified agst all such costs & expses as afsd.

To pay proportion of expense of maintaining roads, sewers, &c.

XIV. AND also will pay to the lessor the yrly sum of £—— towards the expse, *or*, "a due proportion with the owners & occupiers of the other messes frontg the garden & planton hinafter mentd (such proportion to be assessed by the surveyor for the time being of the lessor) of the expse," of keeping the garden & planton in the centre of the sd square in good order & condon, & repairg & paintg the curb & iron railgs surroundg the same, until the lessor shl give notice in writg that he will cease to keep up the same garden or planton as afsd, & the contribon of the lessee towards such expse as afsd shl be payable to the lessor yrly on the —— day of —— togr with the rent hby reserved (a); & upon such notice as last afsd being given by the lessor, & thenceforward durg the continue of the term hby grted, the lessee will, jtly with the lessees & occupiers of the other messes frontg the sd garden & planton, maintain the same in good order, & supply the same with fresh flowers, plants, & shrubs, & repair & paint the curb & iron railg

To contribute towards keeping up ornamental garden or enclosure.

(a) It has been common, in this and similar cases, to add, "& to be recoverable by distress or orwise in like mner as rent in arrear;" but this is invalidated by the Bills of Sale Acts, 1878 and 1882 (see ss. 4 and 6 of the former Act, and *Pulbrook v. Ashby*, 56 L. J. (N. S.), Q. B. D. 376; 35 W. R. 779); and is therefore omitted. Possibly an implied right of distress might be created by reserving the money as extra rent, as in the case of insurance rent (see above, p. 678, Form VII.), but this seems doubtful.

As to power of distress.

surroundg the sd garden, in all respts to the satisfon of the lessor, or his surveyor or agent.

To deliver
up at end
of tenancy
in good
repair.

xv. AND the sd demised premes so painted, repaired, cleansed, maintained, amended, & kept as afsd will, at the expiron or sooner determinon of the sd term, quietly yield up unto the lessor, togr with all addons & improvmts made thto in the meantime, & all fixtures (a) of every kind in or upon the sd premes, or wch (b) durg the sd term may be affixed or fastened to or upon the same [except tenant's or trade fixtures].

The same.
Short
form.

xvi. AND will at the determinon of the sd tenancy quietly yield up the sd premes with the fixtures wch now are, or at any time durg the sd tenancy shl be thron in a good & tenant-able state of repair & condon [except as afsd, *see above, note to form ix.*].

To permit
lessor to
enter and
view pre-
mises, and
to repair
on notice.

xvii. AND also that it shl be lful for the lessor, or his agents (c) twice or oftener in every yr durg the sd term, durg seasonable hours in the day time, with or witht workmen or others, to enter the sd premes to view the state of repair & co don of the same, & of all defects & wants of reparon then & there found [& wch the lessee shl be liable to make good under the covts hinfte contd], to give or leave on the sd premes notice in writg to the lessee: AND THAT the lessee will within the space of three calr months after such notice, or sooner if requisite, repair & make good the same accdg to such notice & the covt in that behalf hinfte contd.

The same.
Short
form.

xviii. AND also will permit the landlord [or superior landlord], or his agents at any time to enter the sd premes, & examine the state of repair & condon thof: AND will repair & make good all defects, of wch notice in writg shl be given by the landlord [or superior landlord] to the tenant, within three calr months after the giving of such notice.

(a) See Elph. Introd. Conv. 262. A schedule of the landlord's fixtures may be annexed to the lease.

(b) In a long lease this is usually qualified by saying, "or wch at the expiron of the sd term, or at any time during the last seven yrs thof may be affixed," &c.

(c) In an underlease say, "the lessor & the superior landlord of the sd premes or their respive agents."

xix. AND also that if the lessee shl at any time make default in the pformce of any of the covts hinfce contd for or relatg to the repair of the sd premes, it shl be lful for the lessor (but witht prejudice to the rt of re-entry under the clause hinafter contd), to enter upon the sd premes, & repair the same at the expse of the lessee, in accdce with the covts & provons of these psnts, & the expses of such repairs shl be repd by the lessee to the lessor on demand (e).

Power to lessor to repair on default of lessee (d).

xx. AND also will permit the lessor (f) or his surveyor or agent at any time or times durg (g) the sd term to enter the sd premes or any pt thof durg seasonable hours in the day time, & to take schdles or inventories of the fixtures & things to be yielded up at the expiron of the sd term.

Power to lessor to enter to take inventories of fixtures.

xxi. AND also that it shl be lful for the lessor (f) or his agents or workmen, & for the tenants & occupiers of the adjoining messes, at any time durg the sd term at seasonable hours in the day time to enter upon the premes hby demised for executg repairs or alterons of or upon such adjoining premes, makg good to the lessee all damage thby occasd.

Power to lessor to enter to repair adjoining premises.

xxii. AND also that it shl be lful for the lessor, or his agents, at any time within three calr months next bfe the expiron or sooner determinon of the sd term, to enter upon the sd premes, & to affix upon any suitable pt thof a notice-board for relettg the same, & that the lessee will not remove or obscure the same, & will permit all psons by order in writg of the lessor, or his agents, to view the sd premes at seasonable hours in the day time witht interruption.

To permit lessor before end of lease to put up notice for re-letting, &c.

xxiii. AND also will repay to the lessor all sums wch he shl expend [in psuance of the covt of the lessor hinafter contd] for insurg the sd messe, bldgs, & premes agst fire [or accident], every such sum to be so repd on the qtrly [half-

To repay to lessor sums paid for insuring.

(d) The landlord would have no such right without express authority, Woodfall, L. & T., p. 634. The acting on this power might, but for the provision to the contrary, be held to be a waiver of the right of re-entry for breach of the covenant to repair; see *Doe v. Lewis*, 5 Ad. & E. 277.

(e) See p. 683, note (a).

(f) In an underlease, if there is a similar covenant in the head lease, say, "the lessor or the superior landlord, or their respive," &c.

(g) In a long lease, say, "during the last seven yrs of the sd term."

yrly] day for paymt of rent under this demise next ensug after the expenditure thof (a).

To insure
and re-
build in
case of fire.

XXIV. AND also will forthwith insure (b) & at all times durg the sd term keep insured agst loss or damage by fire the sd messe, & all bldgs, erons, & fixtures of an insurable nature, wch at any time durg the sd term may be erected or placed upon or affixed to the sd demised premes, in the sum of £—— at the least, *or*, “to three-fourth pts of the value thof at the least,” *or*, “to the full value thof,” [such value to be determined by the surveyor for the time being of the lessor,] in the —— Insce Office, or in some other office of repute to be approved [prescribed] in writg by the lessor (c), in the name of the lessor, *or*, “in the jt names of the lessor & lessee,” [or in such other name or names as the lessor shl from time to time prescribe]: AND will, whenever required, produce to the lessor, or his agent, the policy of every such insce, & the rect for the last premium thof, [and that in default thof the lessor may witht prejudice to the power of re-entry under the clauses hinafter contd insure the sd premes in mner afsd & pay the premiums payable in respt thof, & that the premiums so pd & all incidental expses shl be repd by the lessee to the lessor on demand (d)]. And that, in case the sd messe, bldgs, & premes or any pt thof shl at any time durg the sd term be destroyed or damaged by fire (e), then & as often as the same shl happen, all moys recd in respt of such insce (f) shl with

(a) It might be better to reserve the insurance money as extra rent, see Form VII., p. 678.

(b) In an under-lease, the covenant must be in accordance with that in the head-lease as to the sum assured, and the office and names in which the insurance is to be effected. As to the covenant to insure, see 5 Dav. Prec., part 1, p. 542, note; Elph. Introd. 258.

Variations
for insur-
ance of
windows
against
accident.

(c) Where plate-glass windows are to be insured, add here, “& also insure & keep insured agst loss or damage by accident all plate-glass windows in the demised premes to the full value thof in the —— Insce Office, or in some other office of repute to be approved [prescribed] as afsd.”

(d) See p. 683, note (a).

(e) For plate-glass windows, add here, “or in case the sd plate-glass windows or any of them shl be destroyed or damaged by accident.”

(f) As to the right to require insurance moneys to be laid out in rein-

all convenient speed be laid out in rebldg, repairing, or orwise reinstatg the same premes in a good & substantial mner [& under the diron of the surveyor of the lessor] [accdg to the psnt plan & elevon (g), or in such other mner as shl be previously approved of in writg by the lessor], & in case the moys recd in respt of the sd insce shl be insufft for that ppose, will make good the deficiency out of his own moys.

xxv. AND will, durg the sd term, keep the sd messe, bldgs, & premes hby demised insured agst fire in some responsible office in the sum of £—— at the least in the jt names of the lessor & lessee, & whenever required produce to the lessor the policy & rect for the last premium in respt of such insce, & that in case of the destron or damage of the sd premes by fire the moys recd in respt of such insce shl be laid out in rebldg or reinstatg the same, & in case such moys shl be insufft for such ppse the deficiency shl be made good by the lessee.

The same.
Short
form.

xxvi. AND also will not carry on or permit upon the sd premes any trade or occupon, or do or suffer any other thing wch may render any increased or extra premium payable for the insurce of the premes agst fire, or wch may make void or voidable any policy for such insce.

Not to do
anything
to increase
rate of
insurance.

xxvii. AND also, if at any time durg the sd term any trade or occupon shl be carried on, or anything shl be done upon the premes, wch shl cause the premium to be chged by any such insce office as afsd to exceed the rate of —— p.c., will give notice thof unto the lessor, & will also pay the extra premium so to be chged as afsd.

If rate of
insurance
be in-
creased, to
give notice
to lessor.

xxviii. AND also will, under the inspon & to the satisfon of the surveyor for the time being of the lessor, & in accdce with the plans, elevons, & specificons already, or, "to be,"

To build
or finish a
house, with
variations
(h).

stating the premises in the absence of special contract, see Elph. Introd. 258, *ante*, p. 269, note.

(g) For plate-glass windows, add here, " & as to the sd plate-glass windows, with glass of the same nature, quality & thickness as at psnt."

(h) For various covenants as to building which can readily be adapted to a lease, see p. 288 *et seq.* As to the necessity for this covenant where the lease is under a power, see *Re Hallett*, 24 Ch. D. 624; *Re Chawner*, [1892] 2 Ch. 192.

approved by him, [build & construct on the sd pce of land hby demised, one villa residce or dwellg-house of the cost value of at least £——, *or*, “of the yrly lettg value of at least *five* times the rent hby reserved (a) ”] [*or, if partially built, complete & finish the messe, bldgs, & erons, hby demised*], with offices & outbldgs thto annexed, & all necy & suitable fences, roads, foot-pavemts, ways, drains, & other works in cannon thwith, AND will complete the same fit for habiton & use bfe the —— day of ——, unless prevented by fire, stress of weather, or strikes or combinons of workmen: [AND also will by means of vouchers or other reasble evidce when required, on or bfe the —— day of ——, satisfy the sd surveyor that the sum of £—— has been expended on the sd bldgs & works], [AND also will pay & dischg the reasble fees & chges of such surveyor].

To face
buildings
so as to
increase
light to
adjoining
property.

XXIX. AND also that every bldg to be erected upon the sd plot of land hby demised shl be faced on the sd frontg towards —— Ct afsd with white glazed bricks or tiles or with stucco or cement painted white or a light stone colour, & if faced with glazed bricks or tiles shl be kept thoroughly cleaned, or if faced with stucco or cement shl be repainted in a workman-like mner with two coats of good oil paint once at least in every three yrs of the sd term.

Not to
erect other
buildings.

XXX. AND also will not at any time durg the sd term witht the consent in writg of the lessor first obtained erect or place any addonal bldg or eron on any pt of the demised premes [other than a stable & coach-house, entrance-lodge, gardener's cottage, greenhouses & summer-houses, or other similar outbldgs suitable for the convenice of the occup.ers of, & to be used as appurtt to, the sd messe hby demised, & for no other ppose].

Not to
make al-
terations in
premises,
&c., with
variations.

XXXI. AND also will not at any time durg the sd term, witht the licence in writg of the lessor first obtained, erect any new bldgs on the premes hby demised [except as afsd] or make any alteron or addon whatsr in or to the sd messes & premes hby demised or any bldgs wch may be erected on the sd premes [psuant to the provons hinfce contd, or] with such

(a) There is no ad valorem duty on the value of buildings to be erected; see the Stamp Act, 1891, s. 77 (2).

licence as aforesaid, either externally or internally, [or, make any alteration in the plan, external construction, height, roof, walls, timbers, elevation, architectural appearance, or decorations of the said messuage & premises, or any buildings, &c., as above, nor build or set up any erection or projection of any kind in the garden or yard in the front or rear of the said messuage or on any part of the said premises which shall destroy or interfere with the uniformity of the said premises with the adjoining houses, or which may in any way obstruct or lessen the access of light or air to or interrupt the view from the adjoining houses or buildings], [and that, in case at any time during the said term there shall be occasion to rebuild the said messuage & buildings, or any part thereof, whether by reason of destruction by fire or through decay, or from any other cause, the same shall be rebuilt according to the original plan & elevations thereof, or according to such other plan as shall be previously approved of in writing by the lessor, & not otherwise].

xxxii. AND also, before making any alterations in the said messuage, or the outbuildings thereof, or erecting any other buildings on the said demised premises or any part thereof, will obtain the approval in writing of the lessor to the plans & specifications of such intended alterations or buildings, & make or erect the same in such manner as shall be so approved.

To obtain lessor's approval before altering premises.

xxxiii. AND also will not at any time cut, maim, or remove the main walls or timbers of the said premises, unless for the purpose of supplying & making good any defect therein, which shall be supplied & made good accordingly.

Not to cut main walls.

xxxiv. AND also will not at any time during the said term without the consent in writing of the lessor, cut down or destroy any timber or timberlike trees now or hereafter standing or growing on the said premises, or open, work, or dig for any mines, minerals, quarries, clay, gravel, or sand, in, upon, or under the same, but will to the utmost of his power keep the said timber & trees in good preservation, & the said mines, minerals, quarries, &c., unopened & unworked.

Not to commit waste.

xxxv. AND also will not use the said premises, or permit (b) the same to be used for the purposes of any trade, manufacture or business (c) of any description [or for burning bricks, clay, or refuse, or for putting out clothing or other articles to dry or

Not to use premises for trade, &c., with variations.

(b) As to what is "permitting," see *Hall v. Ewin*, 37 Ch. D. 74.

(c) As to what is a "business," see *Rolls v. Miller*, 27 Ch. D. 71 (Charitable Institution).

bleach], or as an asylum for lunatics or idiots, hospital or other charitable institon, or by any public body or society, or for any school, or teachg of music, or as a tea-garden, or hotel, or tavern, or for the sale of beer, wine, or spirits (a), & will not hang, place, or deposit any goods or things for sale or orwise outside of any pt of the premes, or in, upon, or over the yard, garden, or area thof, nor exhibit or permit in, upon, or about the sd premes any bill or placard intimatg or givg notice that a pt of the sd premes (less than the whole) is to let furnished or unfurnished, nor put up, or permit, in or upon any pt of the sd premes, any bill, notice, door-plate, or advertisemt, or any outward mark or show of business (b), nor at any time have or permit any sale by auction, exhibon, or public meetg or public entertainment, to be held in or upon the sd premes witht the consent in writg of the lessor.

To use as
private
dwelling-
house
only (c).

xxxvi. AND also will use & occupy the sd messe as a private dwg-house only [& the sd coach-house & stable as a private coach-house & stable, & the rooms over the same for the lodgg of servants or others in the employmt of the lessee], & for no other ppose, [& that if the premes are occupied by a medical man he shl not rece lunatics or other patients to reside in the house, nor have any dispensary or shop for dispensg or sellg medicines on the premes], or, [that every bldg erected on the land hby demised shl be used only as a private dwg-house or a coach-house, stable, or other outbldg belongg thto, & that so much of the sd land as shl remain unbuilt upon shl be used only as the yards, gardens, or pleasure-grounds of such dwg-house & premes].

To use as
offices only.

xxxvii. AND also will not use or occupy the sd premes, or permit the same to be used or occupied orwise than as offices, or for any ppose, or in any mner inconsistent with such user or occupon, nor so as to be a nuisance, annoyce, or damage to the owners or occupiers of the other offices or rooms in the same house, or the adjoining houses.

Not to
carry on
offensive
trades,
&c. (d).

xxxviii. AND also will not carry on or permit upon the sd premes, or any pt thof, any offensive, noisy, or dangerous

(a) See *Buckle v. Fredericks*, 34 Sol. J. 362.

(b) See *Evans v. Davis*, 27 W. R. 285.

(c) See *German v. Chapman*, 7 Ch. D. 271; see other forms, p. 291 *et seq.*

(d) See also pp. 291, 293, forms *f* (1)—(7).

trade, business, manufacture, or occupon, or any nuisance, nor use the same, nor allow the same to be used for any illegal or immoral ppose, but will use the same as a private dwg-house, or for carryg on handicrafts or occupons of a quiet & inoffensive nature only.

xxxix. AND also will not do or suffer to be done, in or upon the sd premes, or any pt thof, any act, or thing, wch shl or may be, or become a nuisance (e), damage, annoyance, or inconvenience to [the lessor (f), or his tenants, or] the occupiers of any of the adjoining houses, or the neighbourhood.

Not to do any act to the damage or annoyance of the lessor, or his tenants, &c.

xl. AND also will not stop up, darken, or obstruct any windows or lights belongg to the sd bldgs hby demised, or any adjoining bldgs belongg to the lessor (f), nor permit any new window, light, openg, doorway, path, passage, drain, or other encroachmt or easemt to be made into, agst, or upon, the sd premes hby demised, wch might be, or grow to the damage, annoyance or inconvenience of the lessor (f). And in case any such window, &c., shl be made, or attempted to be made, will give immediate notice thof to the lessor, & will at the reqt & cost of the lessor, adopt such means as may be reasbly required or deemed pper for preventg any such encroachmt, or the acquison of any such easemt.

Not to stop up windows of demised premises, and not to permit new lights or encroachments in adjoining tenements.

xli. AND also will not (h) assn [transfer, underlet, or pt

Not to assign or underlet without licence (g).

(e) As to the effect of this covenant, see *Bamford v. Turnley*, 3 B. & S. 62; *Walter v. Selfe*, 4 De G. & S. 315; *Harrison v. Good*, L. R. 11 Eq. 338; *Tod Heatly v. Benham*, 40 Ch. D. 80, *supra*, p. 293, note.

(f) In an underlease, say, "the lessor or the superior landlord."

(g) See 5 Dav. Prec., Pt. I., p. 193; Elph. Introd. 264; *West v. Dobb*, L. R. 4 Q. B. 634, 5 Q. B. 460; *Varley v. Coppard*, L. R. 7 C. P. 505; *Corporation of Bristol v. Westcott*, 12 Ch. D. 461. If the lessor is not to withhold his consent to an assignment, &c., to a responsible person, or "arbitrarily," and he withholds it, his consent is not necessary to render such an assignment valid, *Hyde v. Warden*, 3 Ex. D. 72; *Treloar v. Bigge*, L. R. 9 Ex. 151; *Sear v. House Property, &c. Society*, 16 Ch. D. 387; but his consent must be asked for; *Barrow v. Isaacs*, [1891] 1 Q. B. 417. This covenant is excepted out of s. 14 of the Conv. Act, 1881, see sub-s. 6 (i): as to the right of re-entry on a breach of it, see *Barrow v. Isaacs*, *ubi supra*. A covenant not to assign without licence, though commonly inserted in rack-rent leases, is not, technically, a "usual" covenant; *Re Lander*, [1892] 3 Ch. 41. In the absence of express provision in the lease to the contrary, every lease is to be

As to covenant against assignment, &c., without licence.

(h) In a building lease, insert here:—"at any time durg the last seven yrs of the sd term hby grted."

Proviso in
lease of
business
premises.

with the posson of] the sd premes or any pt thof (orwise than by will) [or by underlettg the same with or witht the furniture thrin for any term not exceedg *one yr*] witht the previous consent in writg of the lessor [but so that such consent shl not be withheld to an assnmt or underlettg of the sd premes to a respectable & responsible pson; *or*, "shl not be unreasbly, arbitrarily, or vexatiously withheld, & so that no fee or chge shl be required to be pd for the givg thof."'] [PROVD THAT it shl be lful for the lessee to take a ptner or ptners in his sd business carried on in the sd demised premes, & also to remove or dispose of any of the engines, machy, bldgs, erons, & other things thron, for the ppose of replacg or renewg the same, & such act shl not be deemed to be a breach of the covt lastly hinbfe contd.]

To give
lessor
notice of
assignment
of lease.

XLII. AND also that the lessee will, within three calr months next after any absolute transfer, assnmt or devolon of his intt under this psnt lease in the sd demised premes, or any pt thof, give notice in writg of such transfer, assnmt, or devolon, & of the name, quality, & place or places of abode of the transferee or transferees or assnee or assnees to the lessor or his solor, & produce to him the instrumt of such transfer, assnmt, or devolon, & pay to him a fee of £—— for the registron of such notice.

To give
lessor right
of pre-emp-
tion in case
of assign-
ment, &c.

XLIII. AND also will not assn or underlet the sd premes, or any pt thof, for all or any pt of the sd term, witht first makg proffer for the sale or disposon of his este or intt thrin to the lessor, provd the lessor will give as great a price or conson as any other pson wd give for the same.

To permit
lessor to
lay down
drains and
gas and
water pipes
in connec-
tion with
adjoining
property.

XLIV. AND also that it shl be lful for the lessor or any pson or psons by him authorized in that behalf, at any time to enter upon the sd demised premes for the ppose of constructg, layg down, alterg, repairg, cleansg, emptyg, or maintaing any sewers, watercourses, cesspools, gutters, drains, water-pipes, [electric wires], or gas-pipes, in connon with, or for the accomodon of, any adjoining ppty, doing as little damage as may be to the sd premes hby demised, & restorg the surface

deemed to be subject to a proviso against the payment of a fine in respect of the grant of a licence to assign; Conv. Act. 1892 (55 & 56 Vict. c. 13), s. 3; but this does not extend to an underletting. As to damages for breach of the covenant, see *Lepta v. Rogers*, [1893] 1 Q. B. 31.

of the soil, & everythg erected thron, witht any unreasble delay, but witht makg compenson for any temporary damage or inconvenience to the lessee, so as no such sewer, &c., shl pass under or through the sd messe hby demised.

XLV. AND that it shl be lful for the lessor at any time durg the sd term to erect, rebuild, or alter any bldgs or erons facing, adjoining or near to the sd demised premes for any ppose & in any mner he may think fit, notwg that the bldg so erected, rebuilt or altered, may obstruct or interfere with any rt of light or air for the time being appertaing to or enjoyed with the sd demised premes or any pt thof or any bldg for the time being thron.

To permit lessor to obstruct lights and easements (a).

XLVI. AND also that, in case at any time durg this demise any dispute shl arise betn the lessee & any other of the tenants of the lessor relatg to the premes to them resply demised, or the pty or other walls, lights, drains, water-courses, or other easemts, rts, or appurts whatsr relatg or belongg thto, or any repairs thto, or nuisance or annoyce arisg thfrom, then & in every such case such dispute (provd the other pty thto shl also have agrd or become bound so to refer the same) shl be reld to the determinon & award of the surveyor for the time being of the lessor, wch shl be final & bindg on the lessee.

Disputes between lessee and other tenants of lessor to be referred to his surveyor.

XLVII. AND also will at all times durg the sd term duly pform & observe all the covts, agrmts, & provons affectg the sd premes hby demised wch are contd in the superior lease of the sd premes dated, &c., & on the pt of the lessee thrunder to be pformed & observed, except the covts for paymt of rent, &c., *here specify any other exceptions*, & will not at any time do, omit, or suffer anything whby such superior lease may be avoided or forfeited; And will at all times keep indemnified the lessor agst all actions, pcdgs, costs, damages, claims, demands, & liability, for, or in respt of, any breach wch may

General covenant by an under-lessee to perform the covenants in the head-lease (b).

(a) This covenant is of course effectual according to its tenor, *Haynes v. King*, [1893] 3 Ch. 439, and excludes the application of *Mitchell v. Cantrill*, 37 Ch. D. 56, where words negating the implication of a grant of lights were held not to preclude the lessee from acquiring them by prescription against the lessor.

Covenant excluding right to lights.

(b) See *Penley v. Watts*, 7 M. & W. 601; *Hornby v. Cardwell*, 8 Q. B. D. 329; 26 Sol. J. 528, 544; *Pontifex v. Foord*, 12 Q. B. D. 152; Elph. Introd. 272.

be committed durg the sd term of any of the sd covts, agrmts & provons, except as afsd.

LESSOR'S COVENANTS.

Commence-
ment.

I. AND the lessor doth hby [for himself & his assns (a)], covt with the lessee [in mner follg: that is to say:]

The same.
Several
lessors.

II. AND the lessors do hby [for themselves respby & their respive assns (a)], covt, &c.

To pay
rates and
taxes (b).

III. THAT the lessors will durg the sd term pay all existg & future rates, taxes, chges, & outgoings whatsr, whether parlia-mentary, parochial, or local, for the time being payable in respt of the sd demised premes, [except such & such pts of the sd rates, taxes, chges, & outgoings, as are hinfte covted to be pd by the lessee.]

To repair
outside of
premises
(c).

IV. AND ALSO will at all times durg the sd term keep the outer walls, roof, & outside of the sd messe & bldgs in pper & substantial repair.

To execute
sanitary
works.

V. AND ALSO will at any time durg the sd term, exte any works wch by any report made by the surveyor to the sanitary authority of the district shl be certified to be necy in order to put the sd premes into good sanitary order & condon.

To repair
in lease of
part of a
house to be
used as
offices.

VI. AND ALSO will at all times durg the sd term, keep the main walls & timbers, roof, drains, & exterior of the sd bldg & premes, & the staircase, passages, water-closets, & lavatories, & such other internal pts thof as shl from time to time be used by the lessee, in common with the owners or occupiers of the other rooms or offices in the sd bldg, in good & substantial repair, & in clean & pper order & condon, & also will keep the flooring & timbers above the sd demised premes & all the upper pts of the sd bldg & all cisterns & water pipes thrin in such

As to
lessor's
covenants
binding
assigns.

(a) As to the statutory provisions making the benefit and obligations of the covenants run with the land, see p. 670, note. The words in brackets binding the assigns of the lessor are of course inappropriate for a mere personal covenant, such as the covenant for quiet enjoyment.

(b) See *ante*, p. 679, note.

Lessor's
covenants
to repair.

(c) The lessor is not liable under this covenant unless he has received notice of the want of repair; *Makin v. Watkinson*, L. R. 6 Ex. 25; *Manchester, &c. Co. v. Carr*, L. R. 5 C. P. D. 507.

good & substantial order & condon as will prevent any injury to the sd demised premes or the furniture or contents thof from leakage by water or orwise & make good all damage thto caused by any such want of repair or leakage or by any negligce or act of any of the occupiers of the upper pts of the sd bldg (d).

VII. AND ALSO will at all times durg the sd term (unless To insure. such insce shl be vitiated by an act of the lessee) insure & keep insured the sd demised messe & premes agst loss or damage by fire in some insce office of repute in the sum of £—— at the least, & will, whenever required, produce to the lessee the policy or policies of such insce, & the rect for the last premium for the same: And further, that in case of destron of or damage to the sd premes, or any pt thof by fire, the lessor will, with all convenient speed spend & lay out all moys reced in respt of such insce in reblgd or reinstatg in a good & substantial mner the premes so destroyed or damaged (e), & in case such moys shl be insufft for such ppose, will make good such deficiency out of his own moys.

VIII. AND ALSO will adequately insure the sd premes agst fire, & in case of destron or damage by fire, will rebuild or reinstate the same. The same. Short form.

IX. AND ALSO that no bldg or eron shl at any time durg the sd term be erected or placed in the garden or rear of the house No. — in — Street, & abuttg on the east side of the sd premes hby demised, so as in any mner to obstruct or interfere with the access of light or air to any windows or opengs now existg in the same premes. Not to build so as to obstruct lights.

X. AND THAT the lessee payg the rent [sevl rents] hby reserved, & pformg & observg the sevl covts, condons, & agrmts hrin contd, & on his pt to be pformed & observed (g), shl & may For quiet enjoyment (f).

(d) See *Anderson v. Oppenheimer*, 5 Q. B. D. 602.

(e) See p. 686, note (f).

(f) As to what amounts to a breach of this covenant, see *Sanderson v. Mayor, &c. of Berwick*, 13 Q. B. D. 547; *Jenkins v. Jackson*, 40 Ch. D. 71; *Robinson v. Kilbert*, 41 Ch. D. 88; *Aldin v. Latimer, &c.*, [1894] 2 Ch. 437. As to who are "persons claiming under" the covenantor, see *David v. Sabin*, [1893] 1 Ch. 523; *Kelly v. Rogers*, [1892] 1 Q. B. 910.

(g) It seems that this does not make the payment of rent, &c., a condition precedent, *Edge v. Boileau*, 16 Q. B. D. 117; but see *Bastin v. Bidwell*, 18 Ch. D. 238; where the covenant was for renewal of the lease.

As to covenant for quiet enjoyment.

peaceably & quietly hold & enjoy the sd premes hby demised durg the term hby grted witht any lful interron or disturbce from or by the lessor, his hrs or assns, or any pson or psons claimg under or in trust for him (a).

The same.
Short
form.

XI. THAT THE tenant, so long as he shl pay the rent hby reserved, & pform the covts on his pt hrin contd, may hold & quietly enjoy the sd premes durg the sd term witht interron by the landlord, or any pson claimg under or in trust for him.

Covenant
by trustee
against
incum-
brances
(b).

XII. THAT THE lessor has not done or knowingly omitted or suffered or been pty or privy to anythg whby he is prevented from demisg the premes or any pt thof in mner afsd.

Covenant

XIII. AND ALSO that the lessor will from time to time hrafter

As to
implying
covenants
for title.

(a) Covenants for title, &c., cannot be implied in a lease by making the lessor demise as "beneficial owner" or as "trustee," &c.; see the Conv. Act, 1881, s. 7 (5); but the statutory covenants may be incorporated in the manner shown, *ante*, p. 410. As to the covenant implied by the word "demise," see Elph. Introd. 266. As to what covenants are implied by the word "let," see *Baynes v. Lloyd*, [1895] 1 Q. B. 820, 2 Q. B. 610; 39 Sol. J. 444. Sometimes the words "by way of assurre only & not of covt or warranty" are inserted before the word "demise," &c., to exclude any implied covenant; but the express covenant for quiet enjoyment would exclude any implied covenant. If several houses are demised by one lease at separate rents, say, "sevl yrly rents hby reserved," "sevl covts, &c., in respt of each of the sd messes & premes resp'y," "the sd sevl premes."

Covenant
by trustees,
&c.

(b) Compare forms iv. and v., p. 406. Where a trustee, executor or mortgagee grants a lease without the concurrence of any other person willing to covenant, he often gives the covenant for quiet enjoyment, as the liability under it is not very onerous; but it is conceived that in strictness a trustee, executor, or mortgagee cannot be compelled, even where the lease is granted pursuant to a contract entered into by the settlor, testator, or mortgagor (see the Conv. Act, 1881, s. 18, sub-s. 12), to enter into any covenant except that he has not encumbered. See *Worley v. Frampton*, 5 Hare, 560, and the cases there cited, and 1 Dart, V. & P. 623.

Where an executor grants an underlease pursuant to his testator's contract, the covenant may be qualified by adding the words, "but so as not to incur any psonal liability except in respt of his own acts & defaults to an extent exceedg the assets of the sd testor wch may come to his hands," or "so as to bind the este of the sd testor but not so as to incur any further or other liability."

As to the case where the executor is the lessee taking the lease pursuant to the testator's covenant, see *Stephens v. Hotham*, 1 K. & J. 571.

(but at the cost of the lessee) use his best endeavours to procure from the superior landlord of the sd premes hby demised [psuant to the covt in that behalf contd, or to be contd in the superior lease, or any renewal thof,] a new lease or leases of the sd premes, & that thrupon, & when & so often as the sd superior landlord shl grt & exte to the lessor such new lease or leases as afsd, the lessor will within — days next after he shl obtain such new leases resply, at the reqt (d) & cost of the lessee, exte to him a new lease of the sd premes at & under the same rent, & containg the like covts, provons, condons, & agrmts as are in & by these psnts reserved & contd, by way of renewal for the further term of — yrs to be computed from the end of the first — yrs of the term hby grted, & so on from time to time for ever hrafter at the end of every — yrs, the lessee payg for every such renewal at the time of the exon of the renewed lease unto the lessor, the sum of £—, being — yrs' clear ground rent, by way of fine, togr with all arrears of rent, & executg a counterpt of every such renewed lease.

in under-lease for perpetual renewal on payment of a fine (c).

(c) It seems that a covenant for renewal may be validly entered into under a power requiring the best rent to be reserved, provided the rent continues to be the best rent at the time of the renewal (which if the lessee lays out money in building or improvements would not be likely); and although the power only authorizes leases taking effect in possession within a limited time (*Gas Light, &c. Co. v. Towse*, 35 Ch. D. 519). This seems to apply not only to the ordinary express power, but to the leasing powers in Settled Estates Act, 1877 (but see *Re Farnell*, 33 Ch. D. 599), and the Settled Land Act, 1882, ss. 6, 7; and as to a contract to grant a lease, see s. 31 (1), (iii.). The view taken in the former case was that, although a lease *in futuro* is prohibited by the power, a contract to grant a lease *in futuro* is good provided the lease is in conformity with the power when the time for granting it arrives; but this is opposed to *Re Farnell*. The question was raised, but not decided, in *Re Lander*, [1892] 3 Ch. 41, whether there is any difference between a lease for a term with an option to renew for a further term, and a lease for the whole period, with an option to determine at the end of the first term.

As to covenants for renewal in leases under powers.

(d) It may be proper in some cases to specify what notice by the lessor of the intention to renew is to be given; see *Nicholson v. Smith*, 22 Ch. D. 640.

PROVISOES.

Power of
re-entry
(a).

I. PROVD ALWAYS & these psnts are upon this condon, that if the sd yrly rent hby reserved [yrly or other rents hby reserved

Relief
against
forfeiture.

(a) A power of re-entry contained in a lease is not objectionable on the ground of remoteness, whatever is the length of the lease. It merely amounts to a reservation of part of the lessor's estate, a reservation which is equally valid whether it is absolute or contingent. The power of the Court to relieve against forfeiture under a power of re-entry in a lease, which previously applied only to non-payment of rent (as to which see *Elph. Introd.* 232), and a breach of the covenant to insure (22 & 23 Vict. c. 35, s. 4), has been extended by the Conv. Act, 1881, s. 14 (which repeals the last-mentioned enactment), to all cases except (sub-s. 6) a covenant or condition against assigning or underletting, &c. (see *ante*, p. 691), or a condition for forfeiture on bankruptcy (see *Ex parte Gould*, 13 Q. B. D. 454), or taking the lessee's interest in execution (but as to bankruptcy or execution, see now the Conv. Act, 1892 (55 & 56 Vict. c. 13), s. 2(2)), or, in the case of a mining lease, a covenant or condition for allowing the lessor to inspect the books, weighing-machines, &c., or the workings; the lessor being precluded (sub-s. 1) from enforcing the forfeiture, unless the lessee fails, within a reasonable time after notice served on him by the lessor, to remedy the breach, if capable of remedy, and to make reasonable compensation in money to the satisfaction of the lessor, and (sub-s. 2) the Court can give relief on such terms as it thinks fit. This enactment did not apply to an agreement for a lease, unless possibly a right to specific performance could be shown, *Swain v. Ayres*, 21 Q. B. D. 289; *Strong v. Stringer*, 61 L. T. 470 (see *Hood & Challis*, pp. 57 *et seq.*); but see now the definition of "lease" and "underlease" in the Conv. Act, 1892, s. 5. An under-lessee of part of demised premises cannot obtain relief under s. 14 of the Conv. Act, 1881, against forfeiture for breach of a covenant contained in the head-lease: *Burt v. Gray*, [1891] 2 Q. B. 98. But the Court may under the Conv. Act, 1892, s. 4, grant him relief in such a case by an order vesting in him the whole term of the head-lease or any less term; *Highgate v. Sewell*, [1894] 2 Q. B. 906.

As to equitable relief against forfeiture, see *Barrow v. Isaacs*, [1891] 1 Q. B. 417.

The power of re-entry for non-payment of rent is sometimes expressed to arise if the rent is in arrear, &c., "and no sufficient distress can be had or levied for the same," &c.; as to the wording in that case, see *Shepherd v. Berger*, [1891] 1 Q. B. 597.

Frame of
power of
re-entry.

As to the power of re-entry extending to the bankruptcy, &c., of the lessee, see *Hodgkinson v. Crowe*, 19 Eq. 591. It was stated in that case, on appeal, 10 Ch. 622, that under an agreement for a lease to contain the usual covenants, &c., a proviso for re-entry in the lease should extend only to non-payment of rent, and not to breach of any other covenants. This was followed in *Re Anderton*, 45 Ch. D. 476, where Chitty, J., held that s. 14 of the Conv. Act, 1881, had not altered the law on the subject, but suggested that a practice of extending the power to breach of any covenant might in process of time arise. The power, so extended, is inserted in probably 99

or any of them], or any pt thof, shl at any time be in arrear or unpd for twenty-one days after the same shl have become due (whether any formal or legal demand thof shl have been made or not), or if the lessee shl at any time fail or neglect to pform or observe any of the covts, condons, or agrmts hrin contd & on his pt to be pformed & observed, [or if the lessee, while the sd demised premes or any pt thof shl remain vested in him, shl become subjt to the bkptcy laws, or make any arrangemt or composon with his credors, or if the assns of the lessee being a coy shl enter into liquidon whether compulsory or voluntary (b),] then & in any such case it shl be lful for the lessor, or any pson or psons duly authorised by him in that behalf into or upon the sd hby demised premes, or any pt thof in the name of the whole, to re-enter (c), & the sd premes peaceably to hold & enjoy thenceforth, as if these psnts had not been made, witht prejudice to any rt of action or remedy of the lessor, in respt of any antecedent breach of any of the covts by the lessee hinfte contd.

II. PROVD ALWAYS that if the rent hby reserved, or any pt thof, shl be in arrear for twenty-one days after the same shl become due (whether demanded or not), or in the event of any breach of any of the covts & agrmts on the pt of the tenant hrin contd, or of his becomg subjt to the bkcy laws, or makg any composon or arrangemt with his credors, the landlord may re-enter upon the sd demised premes (d).

The same.
Short
form.

out of every 100 leases, whether for occupation or building, or otherwise; and any objection to its insertion is much lessened by the powers now possessed by the Court of relieving against forfeiture, see 37 Sol. J. 111, where the subject is discussed. As to the importance of extending the proviso to the breach of negative covenants, see *Hyde v. Warden*, 3 Ex. D. 72; *Evans v. Davis*, 10 Ch. D. 747; *West v. Dodd*, L. R. 5 Q. B. 460. A power of re-entry on the bankruptcy of the lessee, his executors, administrators, or assigns, does not apply where the lessee has assigned the lease before his bankruptcy, *Smith v. Gronow*, [1891] 2 Q. B. 394.

The variations required for a lease to a company can readily be made from this form; see LEASES, MISCELLANEOUS.

(b) See *Wetley Brick and Pottery Co.*, 30 W. R. 445.

(c) The words often inserted authorising the lessor to effect a forcible entry and eject the lessee are omitted, as such an authority cannot lawfully be given (*Edwick v. Hawkes*, 18 Ch. D. 199; and see *Beddall v. Maitland*, 17 Ch. D. 174); and it seems that the power would not be good even to the extent of authorizing an unopposed entry by breaking open doors and windows.

As to
authorising
a forcible
entry.

(d) The form might as an alternative provide that in the events specified, Another

Proviso to follow power of re-entry in lease of several houses at separate rents.

III. PROVD ALSO & it is hby agrd, that the non-paymt of the rent hby reserved, or the breach of any of the covts or condons hrin contd in respt of any one of the sd messes, shl not authorize the re-entry of the lessor into or upon the others of the sd messes, or any of them, but only into or upon the parlar messe in respt whof such breach shl have happened, it being the intention that each of the sd messes hby demised shl be held durg the sd term hby grted septely from & independently of the others thof, & shl not be affected by any non-paymt of rent or breach of any covt or condon in respt of any others or other of the sd messes.

Proviso excluding liability of lessee after assignment (a).

IV. PROVD ALWAYS & it is hby agrd that the lessee, his exs & ads, shl not be liable to the paymt of the rent hby reserved, or to the pformce of any of the covts or condons hinhfe contd any longer than he or they shl continue to hold this psnt lease, if he or they shl have assned the same to some responsible pson or psons or Co, & notice in writg of such assnmt shl have been given to the lessor, to whom an attested copy thof shl also, if required, be supplied at the cost of the lessee, his exs or ads.

That rent shall be suspended in case of fire in default of lessor re-building.

V. PROVD THAT in case the sd messe, bldgs, & premes, or any pt thof, shl at any time be destroyed or so damaged by fire, explosion, or any other means as to be unfit for occupon or use, & shl not be rebuilt or reinstated by the lessor within three calr months after the occurrc of such fire, then & in such case (unless the insce of the premes shl have been forfeited by the act or default of the lessee) the rents hby reserved, or a fair & just proportion thof, accdg to the nature & extent of the damage sustained, shl from & after the expiron of such three months, & until the premes shl have been rebuilt or reinstated & made fit for occupon or use, be suspended & cease to be payable, & in case of dispute as to the proportion

form of power of re-entry.

"the landlord may determine the tenancy hby created by givg to the tenant seven days' notice in writg to that effect, & may after the expiron of such notice resume posson of the premes & remove thfrom all ppty belongg to the tenant & relet the same witht any process of law or further authority in that behalf."

(a) A clause of this kind is of course very exceptional.

or period of such abatement the same shl be reld to arbitron psuant to the provon in that behalf hinafter contd, such abatement to be in full for all claim for damages by the lessee agst the lessor (b).

VI. PROVD ALWAYS & it is hby agrd that if any pt of the sd [furniture] rent shl be in arrear for twenty-one days, whether legally demanded or not, it shl be lful for the lessor into & upon the sd — & premes or any pt thof to enter & distrain, & the distress or distresses then & there found to dispose of in due course of law, & to apply the produce thof in or towards paymt of the sd yrly rent of £—— so in arrear, & all costs, chges, & expses occasd by the non-paymt thof.

Power of distress (c).

VII. PROVD ALWAYS & it is hby agrd that it shl be lful for the lessee to pay the rent hby reserved to the superior landlord, whose rectx for such yrly rent when pduced & delivered up to the lessor shl be in full satisfon & dischge of so much of the rent hby reserved as in such rectx shl be expd to be reced by the superior landlord.

Clause enabling under-lessee to pay rent to superior landlord.

VIII. PROVD ALWAYS & it is hby agrd that if the lessee shl be desirous of determing this psnt lease at the expiron of the

Power to lessee to determine lease (d).

(b) That in the absence of such a provision the tenant would be liable for the rent, see *Manchester, &c. Co. v. Carr*, 5 C. P. D. 507. Power is sometimes given to one or both parties to determine the lease in case of total destruction; the following may be added for this purpose: "Provd always that in case the sd messe, bldgs & premes shl be destroyed by fire or orwise as afsd so as to be wholly unfit for occupon or use, this psent lease may at the option of eir the lessor or lessee (such option to be decld in writg within — days after such destron), be determined, the lessee in that event payg the rent hby reserved up to such determinon."

Power to determine lease in case of total destruction.

(c) This is probably not affected by the Bills of Sale Acts, 1878 and 1882. Sometimes the common law power of distress is extended by providing:—"that the power of the lessor to distrain upon the sd demised premes for rent in arrear shl extend to & include any tenant's fixtures or fittings not orwise by law distrainable wch may from time to time be thron." See Smith's L. C., p. 469, note. As to the statutory restrictions on the right of distress, see above, p. 683, note.

Extension of power of distress.

(d) This may be inserted under an ordinary leasing power; *Edwards v. Millbank*, 4 Dr. 606; and see *Re Lander*, [1892] 3 Ch. 41, ante, p. 697, note (c).

A power enabling the lessee's executors to determine the lease at the end of three months from his death is sometimes desirable.

first — or — yrs of the term hby grted, & of such his desire shl give — calr months' previous notice in writg to the lessor, or leave the same at or send the same by registered lre to his usual or last known place of abode in England (a), & shl pay all the rent, & pform & observe all the covts hinbfe reserved & contd, & on the pt of the lessee to be pd, pformed & observed up to such determinon, then & in such case, immedly after the expiron of the sd term of — or — yrs, as the case may be, this psnt lease & everythg hrin contd shl cease & be void [witht prejudice to any claim by the lessee agst the lessor in respt of any antecedent breach of any covt or condon hrin contd (b)].

Power to
lessor to
determine
lease.

IX. PROV'D ALWAYS & it is hby agrd that if the lessor shl be desirous of determing this psnt lease at the expiron of the first — or — yrs of the term hby grted, & of such his desire shl give — calr months' previous notice in writg to the lessee, or leave the same for him on any pt of the demised premes (a), then & in such case, immedly after the expiron of the first — or — yrs of the term hby grted, as the case may be, this psnt lease & everythg hrin contd shl cease & be void witht prejudice to any claim by eir pty agst the other in respt of any antecedent breach of any covt or condon hrin contd.

Power to
either
lessor or
lessee to
determine
lease.

X. PROV'D ALWAYS & it is hby agrd that, &c., *continue as in form VIII. down to "determinon,"* or if the lessor, &c., *continue as in form IX. down to "the demised premes,"* then & in eir of the sd cases immedly after the expiron of the sd term of — yrs or — yrs, as the case may be, this psnt demise & everythg hrin contd shl cease & be void, but witht prejudice, if these psnts shl be determined by notice on the pt of the lessee, to any claim by the lessee, &c., *as in form VIII.*, & if these psnts shl be determined by notice on the pt of the lessor to any claim by eir pty, &c., *as in form IX.*

The same.
Short
form.

XI. PROV'D ALWAYS that the tenancy hby created shl be

(a) Provision as to the mode of serving notices whether on the lessor or lessee is desirable, see *Hogg v. Brooks*, 15 Q. B. D. 256. Sometimes a general clause for this purpose is inserted. See form *infra*, p. 704.

(b) The words in this bracket will be inserted if there are any covenants by the lessor other than for quiet enjoyment.

determinable at the end of the first — or — yrs [at any time] by eir pty on givg to the other pty — calr months' previous notice in writg [expirg at any period of the yr].

XII. PROVD ALWAYS & it is hby agrd that the lessor shl be entled, on givg written notice of his intention in that behalf to the lessee at least one calr month bfe the determinon of this psnt demise, or within one week after the determinon thof by re-entry, to pchase from the lessee any addl machy, or effects of the nature of the machy or effects desc'd in the schdle hto, wch may durg this demise be put up or erected in or upon the sd premes by the lessee, at a valuon, to be made by two psons, one to be appted by each pty or their umpire. And in case the lessor shl not so agree to pchase the same, it shl be lful for the lessee to remove the same at the expiron of this demise, or within a reasble time thrafter (e).

Power to lessor to purchase machinery at end of lease (d).

XIII. PROVD ALWAYS & it is hby agrd that if the lessee shl bfe the — day of — give to the lessor, or leave at his last known place of abode in England six calr months' notice (g) of the desire of the lessee to pchase the fee simple of the premes hby demised, then the lessor shl, on the expiron of such notice,

Power to lessee to purchase the freehold (f).

(d) See also LEASES, MINING. As to the rights in respect of fixtures in case of the tenant's bankruptcy, see *Ex p. Gould*, 13 Q. B. D. 454; *Re Moser*, *ib.* 738.

(e) As to the right of a lessee to remove fixtures belonging to him after giving up possession, see Woodfall, L. & T. p. 678 *et seq.*

(f) The benefit of the option of purchase if not exercised by the lessee in his lifetime goes with the lease to his personal representatives and not to his heir, *Re Adams*, 24 Ch. D. 199; 27 Ch. D. 394. On the other hand, the exercise of the option after the death of the lessor has been held as between his real and personal representatives to operate retrospectively, so that the purchase-money is part of his personal estate, *Lawes v. Bennett*, 1 Cox, 167; *Re Isaacs*, [1894] 3 Ch. 506; *Re Pyle*, [1895] 1 Ch. 724. An option of purchase in a lease (however unrestricted as to time), is apparently not open to objection on the score of perpetuity, see *London & S. W. Rail. Co. v. Gomm*, 20 Ch. D. 562, at p. 579; see 39 Sol. J. 618. The option of purchase does not make the lease liable to any extra stamp duty, *Worthington v. Warrington*, 5 C. B. 635.

As to option of purchase.

Trustees in the absence of express power, and executors and administrators, cannot lease with an option of purchase, *Oceanic, &c. Co. v. Sutherland*, 16 Ch. D. 236; and a tenant for life or other donee of an ordinary leasing power is under the same disability; but in the case of building leases or agreements therefor under the Settled Land Act, 1882, this is now authorised under certain restrictions by the Settled Land Act, 1889 (52 & 53 Vict. c. 36).

Power of limited owners to give.

(g) As to the notice, see *Riddell v. Durnford*, W. N. 1893, p. 30.

& upon paymt of the sum of £——, togr with intt thron at the rate of —— p.c. p.a. from the expiron of such notice till the complon of the pchase, & of all rent hby reserved up to such expiron, assure the sd premes unto the lessee for an este in fee simple in posson, free from incumbces, except, &c. Provd also that the title of the lessor to the premes havg been already investigated & approved of by the lessee shl be deemed to be accepted by him up to the date of these psnts.

Provision
as to
notices to
lessee or
lessor (a).

XIV. PROVD ALWAYS & it is hby agrd that any demand of paymt or notice requirg to be made upon or given to the lessee shl be well & sufftly made or given if sent by the lessor through the post by registered lre addressed to the lessee at the sd demised premes or left for him at the sd premes & that any notice requirg to be given to the lessor shl be well & sufftly given if sent by the lessee through the post by registered lre addressed to the lessor at his usual or last known place of abode or business or left for him at such place. And that any demand or notice sent by post in eir case shl be assumed to have been delivered in the usual course of post.

Arbitra-
tion clause
(b).

XV. AND IT IS HBY DECLD that if at any time hrafter any dispute, doubt, or question shl arise betn the lessor & the lessee, touchg the constron, meang, or effect of these psnts, or any clause or thing hrin contd, or their respive rts or liabilities under these psnts or orwise in relon to the premes, [or in case any valuon shl require to be made under the provons hinbfe contd,] then every such dispute, doubt, question, [estimate, or valuon,] shl be reld to the arbitron or decision of two indifferent psons, one to be appted by each pty, & these psnts shl be deemed to be a submission to arbitron within the Arbitron Act, 1889, or any statutory modifon or re-enactmt thof for the time being in force.

Costs of
agreement,
&c.

XVI. THE COSTS & expses of & incidental to the preparon & exon of this agrmt & of the [every] lease & counterpt to be exted psuant thto, shl be pd by the lessee [& lessor in eql shares, or, "accdg to the scale chge."]

(a) See p. 702, note (a).

(b) See the Arbitration Act, 1889 (52 & 53 Vict. c. 49), and *supra*, ARBITRATION. As to the scope of an arbitration clause in a lease, see *Turnock v. Sartoris*, 43 Ch. D. 150.

PRELIMINARY NOTE.

It may be convenient here to mention some powers of leasing possessed by limited owners. As regards settled estates, a tenant in tail can grant a lease of any nature by deed enrolled under the Fines and Recoveries Act, 3 & 4 Wm. IV. c. 74 (see s. 21), and can under s. 41 grant without enrolment a lease for not exceeding 21 years, where the rent is not less than five-sixths of the rack-rent; and a tenant for life or pur autre vie can, under the Settled Estates Act, 1877, 40 & 41 Vict. c. 18, ss. 46, 47, 48, 54 (but see s. 57, and as to copyholds, s. 56), grant leases, except of the principal mansion-house, &c., for any term not exceeding 21 years at rack rent, and subject to other ordinary restrictions. The powers given by the last-mentioned enactment can by s. 49 be exercised on behalf of an infant, lunatic, or bankrupt tenant for life, &c., by his guardian, committee, or trustee respectively; as to married women, see ss. 50—52. See also as to the exercise of leasing powers vested in lunatics, the Lunacy Act, 1890, 53 Vict. c. 5, ss. 120 (h), 122, 124; and as to fines, s. 123 (2); as to lunatics not so found, see s. 116 (2, 3). Other leases of settled estates can be granted with the sanction of the Court under the Settled Estates Act, 1877, and in the case of an infant tenant in fee or in tail under 11 Geo. IV. & 1 Wm. IV. c. 65, s. 17 (referred to below). Questions have arisen under the Settled Estates Acts as to what is a sufficient title to the possession or receipt of the rents to bring a case within the Acts; see *Taylor v. Taylor*, 20 Eq. 297; *In re Dendy*, 4 Ch. D. 879; *Vine v. Raleigh*, 24 Ch. D. 238; and as to the effect of the usual minority clause in the case of an infant, see 4 Dav. 414, note (but the effect of the minority clause in the Conv. Act, 1881, s. 42, might be different). But all the above-mentioned enactments relative to settled estates are practically, to a great extent (save as regards the unlimited power of a tenant in tail under s. 21 of the Fines and Recoveries Act), superseded by the Settled Land Act, 1882, 45 & 46 Vict. c. 38, which applies to all settlements and agreements for settlements by deed, will or otherwise, existing as well as future, of lands of any tenure (s. 2); as to settlements by way of trust for sale, see s. 63 as amended by the Act of 1884, 47 & 48 Vict. c. 18, s. 7, above, p. 466, note. By the Act of 1882, tenants for life as defined by s. 2 (5, 6, 7), and tenants in tail and other limited owners as defined by s. 58, are invested with very large powers of leasing, with or without fine (ss. 6—13, 16, 17, 20, 31), subject to the restriction as to the principal mansion-house and land usually held with it imposed by the Amendment Act of 1890, 53 & 54 Vict. c. 69, s. 10, substituted for s. 15 of the Act of 1882, above, p. 460; fines being payable to the trustees to be dealt with as capital (see the Act of 1884, s. 4). See also the Amendment Act of 1889 (52 & 53 Vict. c. 36), enabling an option of purchase to be given to the lessee. As to leases for erection of artisans' dwellings, see S. L. Act, 1890, s. 18, and 53 & 54 Vict. c. 70, repealing, and by section 74 re-enacting 48 & 49 Vict. c. 72, s. 11 (1). As to leases to a County Council, see 55 & 56 Vict. c. 31, ss. 12, 13. As to giving notice of the intended lease to the trustees, see the Act of 1882, s. 45, as amended by the Act of 1884, s. 5, and as to leases for twenty-one years or less by the S. L. Act, 1890, s. 7, above, p. 465. As to who are trustees of the settlement for the purposes of the S. L. Acts, see the Act of 1882, s. 2 (8), and the Act of 1890, s. 16, and the query, *supra*, p. 463, note, as to whether the latter clause applies to leases. See also the Act of 1882, ss. 50, 53, 54, and the saving clauses (ss. 56, 57), as to the powers contained in the settlement.

Leasing
powers of
limited
owners.
Settled
estates.
Settled
Estates
Act, 1877.

Settled
Land Act.

The powers of the Act are exercisable in the case of an infant tenant for life, &c., by the trustees (s. 60); in the case of a lunatic by the committee under an order in lunacy (s. 62), see also the references above to the Lunacy Act, 1890; and in the case of a married woman by her alone if entitled for her separate use, otherwise by her and her husband together (s. 61). See further as to the provisions of the Act generally, above, pp. 456 to 467, note. As to the effect of the Act where there is an express leasing power, see *Re Duke of Newcastle*, 24 Ch. D. 129.

Infants.

As regards unsettled estates of an infant, a lease granted by the infant himself is voidable at his election on his coming of age. Leases of an infant's fee simple or leasehold lands may be granted with the sanction of the Court under 11 Geo. IV. & 1 Wm. IV. c. 65, s. 17 (as to which see *In re Clark*, 1 Ch. 292; *Re Letchford*, 2 Ch. D. 719; *Re Griffith*, 29 Ch. D. 248); or under the Settled Estates Act, 1877, as extended by the Conv. Act, 1881, s. 41 (which does not seem to apply to copyholds or to leaseholds free from rent), even though the infant be only contingently entitled; *Re Sparrow*, [1892] 1 Ch. 412. Leases of such estates may also be granted by the guardian under the Settled Estates Act, 1877, s. 46, as extended by the last-mentioned enactment (see Hood & Challis, 109, note); as to the case of the guardian being a lunatic, see the Lunacy Act, 1890, s. 128. These enactments as to infants may be superseded by the larger powers of the Settled Land Act, 1882, which is by s. 59 extended to unsettled land of any tenure vested in an infant; but if there are no trustees the powers of that section could not be exercised without going to the Court under s. 60. Even where an adequate leasing power exists without recourse to the Settled Land Act, 1882, it will often be better to grant the lease under the Act, having regard to s. 56, and in order to take advantage of its beneficial provisions (see especially s. 54).

Married women. Married Women's Property Act, 1882.

As regards the estates of married women which are not in settlement, by the Married Women's Property Act, 1882, 45 & 46 Vict. c. 75 (ss. 1 and 2), a woman married after the commencement of the Act is enabled to dispose of her property whensoever acquired, and to contract, so as to bind her separate estate, subject to any settlement or restraint on anticipation (s. 19); and a woman married before the Act has the same power as to property her title to which accrues after the Act (ss. 1, 5). In these cases, therefore, a married woman has the same power of granting leases as if she were unmarried; but women married before the commencement of the Act remain under the old disability as to their then existing property: as to the power to grant leases in the case where the property is not given to the wife for her separate use, see s. 46 of the Settled Estates Act, 1877 (referred to above), enabling a husband to grant leases of his wife's lands. As to the powers of a married woman where the estate is in settlement, see above.

Lunatics.

A lunatic's estate may be let from year to year at the discretion of the committee, who may also grant leases, but only under an order of the Judge in Lunacy, see Lunacy Act, 1890, 53 Vict. c. 5, ss. 120 and 122, and as to execution of a lease by the committee, s. 124, and *Lawrie v. Lees*, 7 App. Ca. 19; as to lunatics not so found, see s. 116 (2); *In re Salt*, [1896] 1 Ch. 117.

Rector or vicar.

A rector or vicar may, with the consent of the patron and ordinary, Co. Lit. 44a, grant a lease for a term not exceeding twenty-one years, or three lives, reserving the accustomed rent or more, under 13 Eliz. c. 10, and may under certain restrictions, grant farming leases with the consent of the bishop and patron for fourteen years, and in some cases, for twenty years,

under 5 & 6 Vict. c. 27, subject to the restrictions imposed by 24 & 25 Vict. c. 105, ss. 1 and 2, and 25 & 26 Vict. c. 52, s. 1.

Most ecclesiastical corporations, including rectors and vicars, may, under the Ecclesiastical Leasing Act, 1842, 5 & 6 Vict. c. 108, as extended by the Act of 1858, 21 & 22 Vict. c. 57, with the consents therein mentioned and the approval of the Ecclesiastical Commissioners, grant leases for any terms, and in any manner with or without a premium. See further as to leases by Ecclesiastical Corporations, Woodfall's Landlord and Tenant, Phillimore's Ecclesiastical Law, p. 1321. Ecclesiastical corporations.

As to the power of trustees of a charity to make a lease, see 16 & 17 Vict. c. 137, ss. 21, 26; 18 & 19 Vict. c. 124, ss. 29, 38, 39, and as to the execution of leases where the legal estate is in the Official Trustee of Charity Lands, see 18 & 19 Vict. c. 124, s. 16; 23 & 24 Vict. c. 136, s. 16. Charitable corporations.

As to leases by the Universities of Oxford, Cambridge, and Durham, and the Colleges in those Universities, and the Colleges of Winchester and Eton, see the Universities and College Estates Acts, 1858, 1860, 21 & 22 Vict. c. 44; 23 & 24 Vict. c. 59. Universities, &c.

As to leases by Municipal Corporations, see Municipal Corporations Act, 1882, 45 & 46 Vict. c. 50, s. 108; and as to leases for working men's dwellings, s. 111, and schedule VIII., forms N. & O. Municipal corporations.

As to leases by corporations generally for erection of artisans' dwellings, see Settled Land Act, 1890, s. 18, and 53 & 54 Vict. c. 70, s. 74 (2), which by s. 102 repeals 48 & 49 Vict. c. 72, s. 11 (2).

As to the general leasing powers of trustees, apart from powers given by the instrument or by statute, see Lewin on Trusts, p. 670; *Re Shaw's Trusts*, 12 Eq. 124; and as to the general powers of executors and administrators to grant underleases, see Williams on Executors, pp. 808 *et seq.*; *Oceanic Steam Navigation Co. v. Sutherland*, 16 Ch. D. 236. Trustees and executors.

The trustees of a charity may (subject to the restrictions imposed by the Charitable Trusts Act, 1855, 18 & 19 Vict. c. 124, s. 29), grant any lease which they are expressly empowered to grant by the instrument creating the trust, or which is beneficial to the charity; as to the nature of the leases which they may grant in the absence of an express power, see Lewin on Trusts, pp. 597—602. A lease granted by them without the sanction of the Charity Commissioners, for a term for which under s. 29 such sanction is necessary, is absolutely void; *Bishop of Bangor v. Parry*, [1891] 2 Q. B. 277. They may also, with the consent of the Charity Commissioners, grant building, improving, or mining leases, under the Charitable Trusts Act, 1853, 16 & 17 Vict. c. 137, s. 21; see also s. 26, and the Amendment Act, 1855, 18 & 19 Vict. c. 124, s. 38. Under the last-mentioned Act, s. 39, all leases granted by the trustees, pursuant to a scheme approved by the Board, are valid; see also s. 16, and the Amendment Act of 1869, 32 & 33 Vict. c. 110, s. 12, enabling a majority of the trustees to grant leases of lands vested in them, or the official trustee of charity lands. Trustees of charity.

Leases of land of any tenure which is in mortgage may by the Conv. Act, 1881, s. 18, be granted by the mortgagor or mortgagee when respectively in possession, unless the statutory power is excluded by the mortgage: the leases authorised being ordinary leases for twenty-one years, or building leases for ninety-nine years, at the best rent and subject to the ordinary restrictions. See *Municipal, &c., Society v. Smith*, 22 Q. B. D. 70. Mortgagor and mortgagee.

As to the power of limited owners to grant agricultural leases, see 14 & 15 Vict. c. 25, s. 1, and as to leases by limited owners to County Councils, the Agricultural leases.

Small Holdings Act, 1892, 55 & 56 Vict. c. 31, ss. 12, 13, extending the provisions of the Settled Land Act, 1882.

Disclaimer
of leases.

As to the disclaimer of leases in bankruptcy, see the Bankruptcy Act, 1883, s. 55, as amended by the Bankruptcy Act, 1890, s. 13; Yate-Lee & Wace, pp. 455, *et seq.*; Elphin. Introd. 175.

As to the position of a person holding an underlease or agreement for one in the event of the disclaimer of the head lease by the lessee's trustee in bankruptcy, see the Bankruptcy Act, 1883, s. 55, as amended by the Bankruptcy Act, 1890, s. 13; *Re Cock*, 20 Q. B. D. 343; *Re Finley*, 21 Q. B. D. 475; *Re Morgan*, 22 Q. B. D. 592; *Re Smith*, 25 Q. B. D. 536 (all cases of sub-lease by way of mortgage); Yate-Lee & Wace, p. 461.

Stamp.

As to the stamp duty on leases & agreements for leases, see the Stamp Act, 1891, ss. 75-78; and schedule, LEASE.

PRECEDENTS.

I.

PREC. I. AGREEMENT *for* TENANCY *of* HOUSE *in a town from* YEAR *to*
YEAR. *Short form.* VARIATION *where the* TENANT *has the*
OPTION *to take a repairing* LEASE.

Parties. AGRMT made this — day of —, BETN A., of, &c.,
hinafter called the landlord, of the one pt, & B., of, &c., hin-
after called the tenant, of the other pt, WHBY THE LANDLORD
Agreement to let. agrees to let (a), & the tenant agrees to take THE HOUSE
Parcels. situate & being No. —, in — street, —, in the city of
Term. —, with the appurts from the — day of — next, from
Rent. yr to yr (b) AT THE yrly rent of £—, payable qtrly on the
usual qtr days, *or*, “on the — day of —, &c.,” eir pty to
be at liberty to terminate the tenancy on givg three calr
months' notice to quit, expirg on any of the sd qtrly days, the
landlord to pay all landlord's rates & taxes, & the tenant to pay
all tenant's rates & taxes, [*or*, the tenant to pay all rates &
taxes except landlord's ppty tax].

(a) As to implying a covenant for quiet enjoyment in a tenancy from year to year, see *Schwartz v. Locket*, 38 W. R. 142.

(b) The demise should not be “for one year and so on from year to year,” as this would enure as a tenancy for two years at least; see *Doe d. Chadborn v. Greene*, 9 A. & E. 658.

[PROVD ALWAYS & it is hby agrd that if at any time durg the tenancy hby created the tenant shl be desirous of havg a lease of the premes for a term of 21 yrs determinable by him at the end of the first 7 or 14 yrs & shl give the landlord a notice in writg to that effect then & in such case provd the tenant shl have duly pformed & observed the agrmts on his pt hinfte contd up to the date of such notice, the landlord will grt to the tenant a lease of the premes accdly for such term as afsd, the lease to be considered as commencg on, & the term to be computed from the — day of —, & to be at the same rent as is hinfte reserved & accdg to the form of lease wch has been pduced to the tenant & signed by both the sd pties hto & wch is hrunto annexed, & from & after the date of the sd notice the agrmt hinfte contd for a tenancy of the premes for the sd — day of — shl be superseded & the premes shl thenceforth until the grantg of the sd lease be considered as held in all respts upon the terms of such intd lease, but so that the covts of the sd lease shl not be deemed to have any retrospective operon in relon to the date of the sd notice.] As WITS, &c.

PREC. I.

Option to
tenant to
take lease
(c).

II.

AGREEMENT *for tenancy of a COTTAGE in the Country from*
YEAR to YEAR (d).

PREC. II.

AGRMT made this — day of — BETN A., of, &c., hin-
after called the landlord, of the one pt, & B., of, &c., hinafter
called the tenant, of the other pt.

Parties.

1. THE LANDLORD agrees to let, & the tenant agrees to take,
from the — day of — from yr to yr, until the tenancy is
determined as hinafter mentd, the cottage & garden ground

Agreement
to let.

(c) If the day for the commencement of the lease is not more than twelve calendar months after the date of the agreement, the lease will not be in *futuro*, and the agreement may therefore be entered into by a tenant for life under the Settled Land Acts. As to contracts for granting leases in *futuro*, see *Gas Light, &c., Co. v. Towse*, 35 Ch. D. 519; *Re Lander*, [1892] 3 Ch. 41; above, p. 697, note.

As to
leases in
futuro.

(d) As to compensation for crops, &c., of small holdings, see 50 & 51 Vict. c. 26.

PREC. II. —	situate in the parish of —, in the coy of —, in the occupon of —, on the follg terms.
Rent, &c.	2. THE RENT to be £—— p.a. payable qrtly on the usual qtr days in each yr, & the tenant to pay all rates & taxes, except tithe & land tax.
Determina- tion of tenancy.	3. THE TENANCY to be determined at any qtr day on eir pty giving a previous qtr's notice in writg to the other of his intention to do so.
Tenant to whitewash.	4. THE TENANT to whitewash the cottage inside & out when required.
Not to take lodgers.	5. THE TENANT not to take any lodgers or allow any married son or daur to reside with him in the sd cottage witht the written consent of the landlord. As wits, &c.

III.

PREC. III. —	AGREEMENT <i>for Tenancy from YEAR to YEAR of part of a House to be used as OFFICES, the LESSORS being a COMPANY.</i>
Parties.	AGRMT made the — day of —, BETN the — Co, Limd (hinafter called the landlords), of the one pt, & —, of, &c. (hinafter called the tenant), of the other pt.
Agreement to let. Parcels.	1. THE LANDLORDS hby agree to let & the tenant agrees to take ALL THOSE rooms or offices on the — floor of the bldg situate & being, &c., & nod — on the plan hto annexed, with the fixtures & fittings specified in the schdle hto, & the appurts, togr with right of ingress, egress, & regress through the hall-door, entrance hall, staircase & passages, from the
Term.	— day of —, from yr to yr until the tenancy is put an end to at the end of the first or any subseqt yr (a) by eir pty on giving to the other — calr months' previous notice in writg, AT THE yrly rent of £——, & so in proportion for any fractional pt of a yr, to be pd by eql qtrly paymts on the — day of —, &c., or, "the four usual qtr days," the first qrtly paymt to be made on the — day of —, & the last to be made in advce one calr month bfe the expiron of the tenancy.
Reserva- tion of rent.	

(a) See p. 708, note (b).

AND THE TENANT hereby agrees with the landlord as follows:—

PREC. III.

2. To PAY the sd rent on the days & in manner aforesaid.

Tenant
agrees—

3. To KEEP the sd demised premises, including the fixtures & fittings thereof, internally in good & tenantable repair & condition (reasonable wear & tear & damage by fire or other accident only excepted), & in such repair & condition to deliver up the same, together with all fixtures & fittings, at the expiration of the tenancy.

To pay
rent.
To keep in
repair.

4. To PERMIT the agents of the landlords to enter at all reasonable times for the purpose of viewing the condition of the sd premises, & at his, the tenant's expense, to make good all defects therein within one calendar month after notice thereof shall have been given or left upon the sd premises.

To permit
landlords
to enter
and view,
and to
repair on
notice.

5. Not to use the sd premises nor any part thereof or suffer the same to be used as a dwelling or sleeping place or otherwise than as offices, without the consent in writing of the landlords, nor without such consent to make any alteration whatsoever therein.

Not to use
as dwelling
place.

6. Not to do or suffer to be done anything which may be or grow to the injury or annoyance of the landlords or the other tenants or occupiers of the sd building, or which may render the landlords liable to pay in respect of the sd building, or any part thereof, more than the ordinary or present rate of premium for insurance against fire, or which may make void or voidable any policy for such insurance.

Not to
cause
annoyance.

7. Not to assign or underlet the sd premises or any part thereof without the consent in writing of the landlords.

Not to
assign or
underlet
without
consent.

8. THE LANDLORDS to have a right of re-entry on non-payment of the rent for 21 days, or breach of any of the tenant's agreements.

Power of
re-entry.

AND the landlords hereby agree with the tenant as follows:—

9. THAT HE, duly paying the rent & performing the agreements hereinbefore contained, may peaceably hold the sd premises during the period aforesaid without any disturbance by the landlords or any person claiming under them.

Landlords
agree for
quiet en-
joyment
(b).

10. To PAY all rates, taxes & outgoings whatsoever, whether present or future, in respect of the sd building & premises.

To pay
taxes.

11. To KEEP the hall, staircase & passages properly lighted.

To keep
lighted.

12. To MAINTAIN & keep the outside main walls & timbers of the sd building & the passages, stairs (c), & conveniences intended for

To keep
outside,
&c., in
repair.

(b) As to this covenant, see *ante*, p. 695, note (f), and cases there referred to.

(c) See *Miller v. Hancock*, [1893] 2 Q. B. 177.

PREC. III. — the common use of the occupants in good repair & in a clean, proper & sanitary condition, with power to enter on the said premises for the purposes of this clause.

To provide water. 13. To PROVIDE at their own cost a sufficient supply of water for the premises. As wits, &c.

[Schedule of fixtures & fittings belongg to the landlords.]

IV.

PREC. IV. — **AGREEMENT for lease of House in Town (a).**

Parties. AGRMT made this — day of —, BETN A., of, &c., hereinafter called the landlord, wch expression shl include, &c., see p. 670, of the one pt, & B., of, &c., hereinafter called the tenant, wch expression shl include, &c., of the other pt.

Agreement to let. 1. THE LANDLORD agrees to grt & the tenant agrees to take a lease of ALL THAT messuage situate & being No. — in — street in the parish of —, in the coy of —, with the appurtenances thereof, & the use of the fixtures now in [& intended to be fixed in] or about the said messuage & premises & particularly described in the schedule hereto, For THE term of — yrs from the — day of — (b), [determinable at the option of the tenant at the expiration of the first — or — yrs of the said term on giving six calendar months' previous notice in writing to the landlord,] AT THE

Reservation of rent.

As to agreements for leases.

(a) This precedent and the following one are inserted for use where the preparation of the lease itself must for any reason be deferred, but if the granting of the lease is not to be contingent on anything to be previously done by the tenant (such as the erection of buildings), it is better to dispense with a preliminary agreement and grant the lease at once, there being no difference in the stamp, and a tenant under an agreement for a lease being now practically a tenant for the whole term as if the lease had been actually granted: see *Walsh v. Lonsdale*, 21 Ch. D. 9; and s. 14 of the Conv. Act, 1881, applies where the lessee has become entitled to have his lease granted (see Conv. Act, 1892, s. 5, settling the question raised in *Swain v. Ayres*, 21 Q. B. D. 289; and commented on by Cotton, L.J., in *Lowther v. Heaver*, 41 Ch. D. 248, at p. 264).

As to the effect of a collateral representation that adjoining houses are subject to restrictive covenants, see *Martin v. Spicer*, 34 Ch. D. 1, 14 App. Cas. 12.

(b) See *Marshall v. Berridge*, 19 Ch. D. 233.

yrly rent of £——, payable qrtly on the —— day of ——, &c., or “the usual qtr days,” in every yr durg the sd term, witht any dedon except for [land tax &] landlord’s ppty tax, the first paymt thof amtg to £—— to be made on the —— day of ——, the tenant to pay & dischge all rates, taxes, & assessmts, & outgoings whatsr, whether parliamentary, parochial, local, or orwise, wch are now or shl at any time durg the sd term be payable by landlord or tenant in respt of the sd premes or any pt thof except [land tax &] landlord’s ppty tax.

PREC. IV.

2. THE LEASE to contain covts on the pt of the tenant To pay the rent & all rates, taxes, assessmts, & outgoings except as afsd : To paint the external wood & iron-work, & other pts previously painted with two coats of good oil colour, & clean & colour the external pts usually coloured once in every three yrs [at the same time as & to correspond with the adjoining houses], & to paint the inside with two coats of good oil colour once in every seventh yr : To keep the sd premes & the fixtures thrin durg the term, & to yield the same up at the expiron thof in a perfect & tenantable state of repair : To permit the landlord to enter & inspect the state of repair & to repair on notice : Not to assn or underlet the premes witht the consent in writg of the landlord [provd that such consent shl not be withheld to an assnmt or underlettg to a respectable & responsible pson] : Not to make any alteron in the premes witht such consent as afsd : [Not to use the same or any pt thof orwise than as a private dwg-house : Not to exhibit any bill or placard on or about the premes intimatg or givg notice that any pt less than the whole of the sd premes is or will be to let : Not to put up in or upon or affix to any pt of the premes any writg or notificon of any profession, trade, or business whatsr : Not to allow any sale by auction upon the premes witht such consent as afsd : To insure in the sum of £—— at the least, or, “to the full value,” or, “to three-fourths of the full value,” in the —— office or some other responsible office in London or Westminster in the jt names of the landlord and tenant, & to produce the poly & rect for the last premium when required, & in the event of fire forthwith to lay out the amt reced from the insce office in reinstatg the premes, & to make good any deficiency out of the tenant’s own moys] : [AND all other reasble covts wch are

Lease to contain covenants.

To pay rent, &c.

To paint.

To keep in repair.

Permit landlord to enter and view.

Not to assign, &c. without consent.

Not to alter.

To use as private house only.

Not to let lodgings.

Not to use for trade or profession.

Not to hold sales by auction.

To insure.

Other usual covenants.

- PREC. IV.** commonly contd in the leases on the — este (a), or, “to be determined in case of dispute by the landlord’s solor”].
- Landlord to insure.** 3. [*If the landlord insures, add in lieu of the above proviso for insce, THE LANDLORD to insure the sd house & premes agst fire in a responsible office in London or Westminster [& the expse thof to be pd by the tenant to the landlord on demand] & in the event of fire the amt reced from the insce office to be forthwith laid out in reinstatg the premes*].
- Power of re-entry (b).** 4. THE LANDLORD to have a rt of re-entry on non-paymt of the rent, whether legally demanded or not, for twenty-one days after the same shl have become due, or on breach of any of the tenant’s covts.
- Lease to be executed on demand.** 5. THE LANDLORD shl, whenever required, exte, & the tenant shl whenever required, accept & exte a counterpt of a lease of the premes upon the terms & condons afsd, such lease & counterpt to be prepared by the solor of the landlord at the expse (c) of the tenant [not exceedg £——, exclusive of stamp duty, or, “the scale chge”], & the landlord’s title shl not be required to be shown (d).
- Until execution** 6. UNTIL THE sd lease is exted the sd pties shl be bound by

(a) This is better than saying “usual” covenants. As to what are usual covenants, see 27 Sol. J. 129, 142, 159, 177; Stroud, Judicial Dictionary, 844; *Crosse v. Morgan*, 37 W. R. 543; *Re Lander*, [1892] 3 Ch. 41; *ante*, p. 691, note.

(b) See *ante*, p. 698, note.

(c) See Elph. Introd. 229.

Title to be shown on contract to grant lease or under-lease.

(d) By the V. & P. Act, 1874 (37 & 38 Vict. c. 78), s. 2, (1) (where it will be noted that the expression “contract for sale” is used in its largest sense so as to include a lease, as being a sale *pro tanto*) and the Conv. Act, 1881, s. 3 (1), under a contract to grant a lease or underlease for years the lessee is precluded from calling for the title to the freehold, but in the case of an underlease is not precluded from calling for the lessor’s leasehold title; by the Conv. Act, 1881, s. 13, under a contract to grant a lease, where the lessor holds by underlease, so that the lease is a sub-sub-lease, the lessee is precluded from calling for the title to the head lease, but not from calling for the sub-lease (see *Gosling v. Woolf*, [1893] 1 Q. B. 39); the effect being that an intending underlessee may always, unless barred by the contract, call for the lease under which his lessor immediately holds.

An agreement for a lease of land with an easement is, as well as to the easement as the land, an agreement for a lease of land, and falls within s. 2 (1) of the V. & P. Act, 1874; *Jones v. Watts*, 43 Ch. D. 574.

By the Settled Land Act, 1882, s. 31 (4), a contract for a lease under that Act is not to form part of the title to the lease when granted; and by the Conv. Act, 1882, s. 4, the same is enacted as to all leases under powers.

the covts hinbfe mentd & agrd to be contd in such lease as if the same were actually exted.

7. THE LANDLORD shl also have a power of distress for recovery of the sd rent & any other moys payable under this agrmt in like mner as if such lease had been actually exted. IN WITS, &c.

PREC. IV.

covenants
in lease to
be binding.
Power of
distress
(e).

[*Schdle of fixtures.*]

V.

AGREEMENT *for* UNDERLEASE *of* HOUSE *in* TOWN,
VARIATIONS *where other* PROPERTY *is comprised in*
the HEAD LEASE (*f*).

PREC. V.

AGRMT made this — day of —, BETN A., of &c. Parties.
(hinafter called the “landlord,” wch expression shl include

(e) As to this see *Anderson v. Midland Ry. Co.*, 30 L. J. Q. B. 94; 5 Dav. Pt. 1, 19.

(f) In framing underleases the express obligation must, of course, be imposed on the underlessee of observing such of the covenants of the head lease as must necessarily be observed by the tenant in possession to prevent a forfeiture, such as covenants relative to the mode of using the premises; and the covenants of the underlease should be so framed as to arm the lessor with the means of seeing that the covenants of the head lease, so far as they are to be imposed on the underlessee, are duly performed, and of enforcing such performance by action, with the right of re-entry in default. The proper and usual course is to repeat such of the superior covenants as are to be performed by the underlessee *verbatim*, or (to save expense where the superior lease is too lengthy) in substance, with the necessary modifications; thus if the head lease contains a covenant by the lessee to repair on notice, the underlease should contain a covenant by the underlessee to repair on notice given either by the head lessor or sub-lessor, and the right of entry to view the condition of the premises and any other similar right should be reserved both to the head lessor and sub-lessor. And it is sometimes desirable to add a general covenant for the performance and observance by the underlessee of all the covenants of the head lease, so far as they relate to his premises, except the covenant for payment of rent, and any others intended to be excepted; and (in order that the loss of the head lease, and not merely the immediate damage arising from the breach of the particular covenant, may be the measure of damages in an action against the underlessee for causing the forfeiture of the head lease) an express covenant not to do anything whereby the head lease may be forfeited. This was the more important, as an underlessee of part of demised property

As to
frame of
under-
leases.

PREQ. v. his exs, ads, & assns, when the context so admits), of the one pt, & B., of, &c. (hinafter called the "tenant," wch expression shl include his exs, ads, & assns where, &c.), of the other pt.

Agreement to let.

Parcels.

Term.

Lease to contain covenants similar to those in head lease.

1. THE LANDLORD agrees to grt & the tenant agrees to take (a) a lease of ALL THAT messe, &c., situate & being, &c., in the parish of —, in the coy of —, with the appurts thof, wch are held [togr with other hds] by the landlord under a lease (hinafter called the head lease) dated, &c. [TOGR WITH the fixtures desc'd in the schdle hto, & all other, if any, fixtures now in or about the sd messe & premes], For THE term of — yrs from the — day of —, At THE rent, &c., *see last precedent.*

2. THE LEASE shl [be subj't to the reservons follg, namely: *here specify reservons in head lease, & shl*] contain covts by the tenant, &c., *here specify covts in the head lease with the varions indicated in the note, last page, & any further covts required* [or, shl contain covts by the tenants similar to those cont'd in the head lease [so far the same are applicable to the premes] with the varions rendered necy by the diffe in the circes, & so that the landlord or the superior landlord, as the case may require, shl be named as the pson to give any notice or consent thrin ment'd (b), & with the exception of the covt for

could not obtain relief under s. 14 of the Conveyancing Act, 1881, against forfeiture for breach of a covenant contained in the head lease; *Burt v. Gray*, [1891] 2 Q. B. 98. But such relief can under the Conveyancing Act, 1892, s. 4 (and see s. 5) now be obtained, by means of an order vesting in the underlessee the whole term of the lease. On the other hand (unless the underlease is at a rack-rent), it is proper that the sub-lessor should covenant to pay the ground rent, and perform such others (if any) of the covenants of the head lease as are to be performed by him, and also to produce the head lease, and (if the latter comprises other property) to perform the covenants thereof, so far as they relate to such other property, See *Elph. Introd.*, p. 272; *Haywood v. Silber*, 30 Ch. D. 404.

As to the effect of a breach by the underlessee of restrictive covenants in the head lease, see *Hall v. Ewin*, 37 Ch. D. 74.

Licence of landlord.

(a) If the licence of the superior landlord to the underlease has to be obtained, add here:—" subj't to the licence of the superior landlord being obtained at the cost of the tenant, & prov'd the same can be obtained witht paymt of any fine or conson."

(b) See *Williamson v. Williamson*, 17 Eq. 549, reversed 9 Ch. 729; *Haywood v. Silber*, 30 Ch. D. 404, which show the desirability of specifying the particular covenants to be included or excluded.

paymt of rent, &c., *here specify any covts wch are inappropriate, AND shl also contain covts by the tenant, here specify any covts not contd in the head lease,*] [& a genl covt to pform & observe & to indemnify the landlord agst the covts of the head lease [so far as the same are applicable to the premes] other than the covt for paymt of rent [& the other covts hinfte excepted, & not to do, omit, or suffer anything whby the head lease may be forfeited, & also a covt to allow the landlord to enter on the premes & to pform thron any covts wch may be necy to prevent a forfeiture of the head lease.]

PREC. V.

3. THE LANDLORD to have a rt of re-entry on non-paymt of the rent for 21 days after the same shl have become due, whether legally demanded or not, or for the breach of any of the tenant's covts.

Power of re-entry.

4. THE LANDLORD to enter into the usual qualified covt for quiet enjoyment [& to covt for paymt of the ground rent & to pform the covts of the head lease wch are hinfte excepted, & all the covts of the head lease with respt to the ppty thrin comprd & not hby agrd to be demised, & for prodon of the head lease].

Landlord's covenants.

5. THE LANDLORD when required shl exte, &c., *continue as in last Precedent, Nos. 5, 6, & 7.* As WITS, &c.

[Schdle of fixtures.]

VI.

AGREEMENT *for Letting a FURNISHED HOUSE (c).*

PREC. VI.

AGRMT made the — day of —, BETN A., of, &c. (hinafter called the landlord), of the one pt, & B., of, &c. (hinafter called the tenant), of the other pt.

Parties.

(c) It might be better to reserve a separate rent for the furniture, lest by the death of the lessor, or by a mortgagee of the house entering into possession, *Salmon v. Mathews*, 8 M. & W. 827, the right to the house and furniture should become severed, as the apportionment of the rent in that case might be difficult. The same remark applies in the case of a lease of freeholds and leaseholds together. Where in a formal lease a separate rent is reserved in respect of the furniture, a power of distress should be

As to severance of rent.

PREC. VI.	1. THE LANDLORD agrees to let, & the tenant agrees to take
Agreement to let.	THE DWG-HOUSE & premes, situate & being No. —, in —
Parcels.	street, in the parish of —, & coy of —, furnished as
Term.	stated in the inventory contd in the schdle hto, FOR A term
Reserva- tion of rent.	of — [calr months] commencg on the — day of —, & ending on the — day of —, AT THE [monthly] rent of £— on posson being taken, £— on the — day of —, &c.
Tenant agrees—	THE TENANT AGREES ;
To pay rent.	2. To PAY the sd rent to the landlord in mner afsd.
To replace breakages, &c.	3. To REPLACE & make good all breakages, deficiencies, & damage to the furniture, fixtures, fittings, & effects in the sd dwg-house & premes, wch may happen durg the period of his tenancy (except reasble use & wear & damage by accidental fire).
To deliver up in same condition.	4. AT THE expiron of the sd tenancy, to deliver up to the landlord posson of the premes with the whole of the sd furniture & effects accdg to the sd inventory, & in the same rooms in wch the same now are, in as sound, perfect & clean a condon as at the commencemt of the sd tenancy (except as afsd).
To pay for washing.	[5. To PAY for the washing of such articles as may require washing.]
To give notice of infectious diseases.	[6. IN THE event of any infectious disease mentd in the 6th section of the Infectious Disease Notificon Act, 1889, happeng in the sd house durg the sd tenancy to give written notice thof, & any other informon wch may be required relative thto, to the landlord or his agent, bfe or immedly upon the expiron of the tenancy, & to pay to the landlord the sum

inserted, see p. 701 ; and 5 Dav. Prec. pp. 31 and 114, notes ; Elph. Introd. 252.

As to
implied
warranty.

As to implied warranty on such a letting that the house is fit for habitation (*e.g.*, free from vermin, properly drained, &c.), see *Smith v. Marrable*, 11 M. & W. 5 ; *Wilson v. Finch-Hatton*, L. R. 2 Ex. Ch. D. 336 ; 28 Sol. J. 529 ; and that there is no implied warranty in an ordinary lease of a house or buildings that the premises are fit for the purpose for which they are to be used, see *Manchester, &c., Co. v. Carr*, 5 C. P. D. 507 ; *Murray v. Mac*, 8 Ir. Rep. C. L. 396 ; or that they are reasonably fit for habitation or occupation, see *Hart v. Windsor*, 12 M. & W. 68 ; except in the case of artisans' dwellings ; see 53 & 54 Vict. c. 70, s. 75 (repealing but re-enacting 48 & 49 Vict. c. 72, s. 12) ; *Walker v. Hobbs*, 23 Q. B. D. 458.

of £—— for the expses of disinfectg the premes, & replacg any articles & things the destron of wch may be rendered necy by such illness, & in case of default in givg such notice as afsd, to pay to the landlord in addon the sum of £—— as liquidated damages (a)].

PREC. VI.

7. Not to assn, underlet, or pt with his intt under this agrmt witht the written consent of the landlord.

Not to assign, &c.

8. THE LANDLORD agrees to pay the superior rent & all rates, taxes, insce, & other outgoings payable in respt of the premes durg the sd tenancy, except the gas-rate wch is to be pd by the tenant.

Landlord to pay superior rent, &c.

9. IN CASE of non-paymt of rent or breach of this agrmt by the tenant, the landlord shl be at liberty to re-enter & take posson of the premes, witht prejudice to his rt to recover all rent then in arrear & any damages for breach of this agrmt. As WITS, &c.

Power of re-entry (b).

[Schdle of furniture.]

VII.

AGREEMENT for Letting FURNITURE, &c., to Hire.

PREC. VII.

AGRMT made the —— day of ——, BETN A., of, &c., of the one pt, & B., of, &c., of the other pt.

Parties.

1. THE sd A. shl let to hire to the sd B., THE FURNITURE, fixtures, goods, & effects, set forth in the schdle or list hrunto annexed (wch are now in, upon, or about the house & premes known as, &c., in the occupon of the sd B., but are the ppty of the sd A.), AT THE RENT of £—— per calr month, & so in proportion for any less period than a month, to be pd by the sd B., to the sd A., on the —— day of —— in every month, the first monthly paymt thof to be made on the —— day of —— next.

Agreement to let.

Reserva-
tion of
rent.

2. THE sd B. hby agrees with the sd A., at all times durg the sd lettg to hire of the sd effects, to keep the same in a

Tenant to keep in repair.

(a) See p. 220, note; 58 & 54 Vict. c. 34, s. 7; and as to London, 54 & 55 Vict. c. 76, ss. 55, 65.

(b) See *ante*, p. 698, note.

PREC. VII.	good & perfect state of repair & condon in every respt &
Insure.	insurd agst fire to their full value in some respectable office, & whenever required to pduce the policy of such insce & the
Replace broken furniture.	rect for the last premium to the sd A., & also to replace such of the sd effects as may be broken, destroyed, or damaged (by whatsr means), with other articles of eql
Not to remove or part with furniture, &c.	value, & not to remove the sd effects or any pt thof from the sd house & premes, nor to underlet, lend or pt with the posson of the same, eir directly or indirectly, to any pson or psons whomsoever witht the previous written consent of the sd A.
Power of re-entry without notice (a).	3. PROVD ALWAYS that the sd A. may at any time witht givg any previous notice to the sd B., put an end to the sd lettg to hire, & may thrupon enter upon the premes or any pt thof, & remove & carry away the sd effects. As WITS, &c.

[Schedule.]

VIII.

PREC. VIII.	LEASE of a DWELLING-HOUSE in a Town for TWENTY- ONE YEARS, with ORDINARY COVENANTS. VARIATIONS where the HOUSE is to be used as a SHOP, when it is situate in a PRIVATE ROAD, or in a SQUARE, where the LEASE is DETERMINABLE by LESSOR or LESSEE or BOTH, where the LESSOR is to INSURE, and where the LESSOR has other PROPERTY ADJOINING (b).
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Parties.	THIS INDRE, made the —— day of ——, BETN A., of, &c., hinafter called the lessor, wch expression shl include, &c., see p. 670, of the one pt, & B., of, &c., hinafter called the lessee, wch expression shl include, &c., of the other pt,
Wit- nesseth.	WITNETH that in conson of the rent [s], covts & condons hinafter reserved & contd & on the pt of the lessee to be pd,

(a) The licence to enter is not assignable by the lessor; *Ex parte Rawlings*, 22 Q. B. D. 193.

(b) For variations for leases granted under powers and for several lessors and lessees, and other special cases, see "LEASES, MISCELLANEOUS."

performed, & observed, the lessor doth hereby demise unto the lessee ALL (c) THAT messuage or tenement situate & known as No. — in — Road [Street or Square] in the parish of —, in the county [city] of — (d), To HOLD the same UNTO the lessee from the — day of — for the term of twenty-one years [determinable as hereinafter mentioned], *Reservon of rent*, p. 676, [if lessor insures at expense of lessee add *insurance rent*, p. 678] if so agreed, *penal rents*, p. 678 : AND THE lessee doth hereby for himself & his assigns, covenant with the lessor (e) in manner following, that is to say, to pay rent, p. 679 ; & rates & taxes, p. 679 ; to paint outside, p. 680 ; & inside, p. 681 ; to keep in repair, p. 681 (f) ; to deliver up at end of tenancy in good repair, p. 684 ; to permit lessor to enter & view, & to repair on notice, p. 684 ; [power to lessor to repair on default of lessee, p. 685] (g), [to insure & rebuild in case of fire, p. 686 (h)] not to make alterations in

FORM VIII.

Demise.

Parcels.

Haben-
dum.Lessee's
covenants.

(c) For other forms of parcels, see p. 378, form III., and p. 672. For addition where use of public garden is included, see p. 673.

(d) If the house is situate in a private road, add here, "together with, &c.," *right of way*, p. 673, form VII. Where adjoining property belongs to the vendor, insert here, *reservon of right of drainage*, p. 674, & if proper, *reservon of general rights & right to rebuild or repair adjacent buildings*, p. 675.

(e) The covenants may be somewhat shortened by numbering them and proceeding from here as follows, the consequential alterations being made throughout: "that the lessee will at all times during the said term, or, 'tenancy,' duly observe & perform all the covenants & provisions following (that is to say), 1. will pay, &c."

(f) If the landlord is to do the outside painting and repairs, omit the covenant by the lessee to paint outside; and at the end of the covenant to keep in repair, the words, "except such repairs as are hereby agreed to be extended by the lessor," and insert among the lessor's covenants the *covenant to paint outside*, p. 680, & *to repair outside*, p. 694.

(g) Where the property is situate in a private road or square, add here, *covenant to pay proportion of expense of maintaining roads, sewers, &c.*, p. 683, or *square*, p. 683, *mutatis mutandis*. Where adjoining property belongs to the lessor, insert, if required, *power to lessor to enter to repair adjoining premises*, p. 685.

(h) If the lessor is to insure, this covenant will be omitted, and if so agreed substitute the covenants, *to repay the lessor the sums paid for insurance*, p. 685, and *not to do anything to increase the rate of insurance*, p. 687. If the house is to be used as a shop, add, if so agreed, the provisions for insurance of the windows against accident, p. 686, note (e).

PREC. VIII. *premes*, p. 688 (a) ; *not to create nuisces*, p. 691 [*not to assn [or underlet] witht licence*, p. 691, *or, to give notice of assnmts*, p. 692] ; *Proviso for re-entry*, p. 698 [*Proviso for cesser of rent on destron by fire*, p. 700] : AND THE lessor doth hby [for himself & his assns] covt with the lessee [*to insure & rebuild in case of fire*, p. 695] ; *for quiet enjoymt*, p. 695 [*Power to lessee or lessor or both to determine lease at end of first seven or fourteen yrs*, pp. 701, 702]. IN WITS, &c.

Lessor's covenants.

IX.

PREC. IX. LEASE of a NEWLY ERECTED HOUSE for NINETY-NINE YEARS to a BUILDER'S NOMINEE (b). VARIATIONS where the House is UNFINISHED (c).

Parties. THIS INDRE, made the — day of — BETN A., of, &c., hinafter called the lessor, wch expression shl include, &c., see p. 670, of the first pt, B., of, &c., *builder*, of the second pt, & C., of, &c., hinafter called the lessee, wch expression shl include, &c., of the third pt, WITNETH that in conson of the expse incurred [and to be incurred] by the sd B. in erectg the messe hby demised, & of the sum of £—— now pd to the sd B. by the lessee (the rect, &c.), & of the rents & covts on the pt of the lessee, & condons hinafter reserved & contd, the lessor, by the diron of the sd B., doth hby demise unto the lessee ALL THAT pce of land situate on the south side of a new

Wit-
nesseth.

Demise.

(a) If adjoining property belongs to the lessor, insert here if required, *covt to use as private dug-house only*, p. 690, *not to do any act to the damage or annoyce of the lessor or his tenants*, p. 691, *to permit lessor to lay down gas & water-pipes, &c., in connon with adjoining ppty*, p. 692. If the house is to be used as a shop, instead of the covenant to use as a private house, insert if required *covt not to carry on offensive trades*, p. 690.

(b) As to building leases under the Settled Land Acts, see p. 732, note, p. 734, note.

(c) For the variations where the house is situate in a private road or square, and where it may be used as a shop, and where the vendor has other adjoining property, see the last Precedent ; and for the variations for a lease granted under a power and for several lessors and lessees and other special cases, see "LEASES (MISCELLANEOUS.)"

road or street intd to be called — Street (d), & ALL (e) THAT messe or dwg-house & out-bldgs erected or now in course of eron on the sd pce of land, & called or intd to be called No. —, — Street, *referce to plan*, p. 672, *form II.*, To HOLD the same Unto the lessee from the — day of — [now last past] for the term of ninety-nine yrs, *reservon of rent of a peppercorn durg first — yrs & aftwds of £—*, p. 677, *form IV.* [*insurce rent*, p. 678] [*if so agrd, penal rents*, p. 678]: AND THE lessee doth hby for himself, &c., covt with the lessor in mner follg, that is to say, to pay rent, p. 679, & rates & taxes affectg premes, “or any erons thron or addons thto,” p. 679; [*if house, &c., is not complete, to finish it*, p. 687, *mutatis mutandis*] (f), to contribute to expse of roads, sewers, &c., p. 683; to paint outside & inside “the sd premes & all addons thto,” pp. 680, 681, & to repair, p. 681; to deliver up at end of tenancy in good repair, p. 684; to permit lessor to enter & view, & repair on notice, p. 684; power to lessor to take inventories of fixtures during last seven yrs, p. 685; not to alter premes, p. 688, to use as private house, p. 690, or, not to carry on offensive trades, p. 690; not to create nuisces, p. 691; to insure & rebuild in case of fire, p. 686; [to give notice of assnmts of lease, p. 692; not to assn or underlet durg the last 7 yrs witht licence, p. 691]; power of re-entry, p. 698: AND THE lessor doth hby (g) covt with the lessee, for quiet enjoymt, p. 695. IN WITS, &c.

PREC. IX.

Parcels.

Haben-
dum.Lessee's
covenants.

(d) In the case of proposed new roads, care should be taken to define what rights of way are intended to be granted, see *Espley v. Wilkes*, L. R. 7 Ex. 298.

(e) See p. 721, note (c).

(f) As to the necessity, where the lease is granted under a power, that the lessee should covenant to erect or complete the building, see *Hallett to Martin*, 24 Ch. D. 624; *Re Chawner*, [1892] 2 Ch. 192. If in that case the lease is not granted until the buildings have been erected, it should, having regard to those cases, be expressed to be granted “in psuance of an agrmt in this behalf dated, &c.”; this makes the agreement part of the title to the lease, which in a lease by an absolute owner would not be the case. As to what are building or repairing leases, see the cases mentioned above, and *Truscott v. Diamond Rock Boring Co.*, 20 Ch. D. 251.

(g) See p. 694, note.

X.

PREC. X.
—UNDERLEASE of a House in Town. VARIATIONS
where OTHER PROPERTY is comprised in the head
LEASE (a).

Parties.

Wit-
nesseth.

Demise.

Parcels.

Lessee's
covenants.

THIS INDRE, made, &c., BETN A., of, &c., hinafter called the lessor, wch expression shl include, &c., see p. 670, of the one pt, & B., of, &c., hinafter called the lessee, wch expression shl include, &c., of the other pt, WITNETH that in conson of the rent hinafter reserved & the covts hinafter contd, the lessor doth hby demise unto the lessee, ALL THAT messe or tenemt, &c., wch is held [togr with other hds] by the lessor under a lease dated, &c. [subjt to the reservons contd in the sd superior lease of the rt, &c., *state reservons, if any, in superior lease*: AND EXCEPT & reservg unto the lessor, &c., *addonal reservons, if any, to sub-lessor*]. *Habendum*, p. 676; *Reservon of rent*, p. 676: AND THE LESSEE doth hby for himself, &c., covt with the lessor to pay rent, p. 679: AND ALSO, &c., *here insert covts similar to those in the head lease, or such of them as are to be pformed by the lessee, substitutg throughout the sub-lessor for the ground landlord, & the sub-lessee for the origl lessee, except that in the covt to permit lessor to enter & view & to repair on notice, the power to enter & view will be reserved to, and the notice to repair will be given by "the lessor, or the superior landlord, & their respive agents," add the other covts,*

Licence of
superior
landlord.

(a) See note, p. 715. If the licence of the superior landlord is required to the underlease, and he is made a party for the purpose, the head lease should be shortly recited, setting forth the covenant against assignment and under-letting, with the addition of the following recital: "AND WHAS the sd X., *superior landlord*, has agrd to concur in these psnts for the ppose of givg his consent to the underlease hby grtd in mner hinafter expd," and the demise will be expressed to be "with the consent (hby testified) of the sd X.," and a proviso should be added, "that the licence hinfte given by the sd X. to this psnt demise shl not be deemed to authorise any further assnmt or underlettg." See LICENCES. If a separate licence is given, which is much more usual and convenient, it need not be referred to in the underlease.

As to the effect of the disclaimer of the head lease in bankruptcy, see references above, p. 708.

if any, to be entered into by the lessee, [d a genl covt to pform covts in head lease, other than for paymt of rent d any other excepted covts, p. 698. AND ALSO will allow the lessor to enter on the sd demised premes & to pform thron any of the covts & agrmts on the pt of the sd origl lessee, contd in the superior lease of the sd premes, wch may be necy to prevent a forfeiture of the sd superior lease]: Provo for re-entry, p. 698: AND THE lessor doth hby for himself, &c. (b) covt with the lessee for quiet enjoymt, p. 695: [AND ALSO will durg the sd term pay the rent reserved by the sd indre of lease of the — day of — on the first day on wch the same shl be payable: AND WILL pform & observe the covts on the pt of the sd, origl lessee, contd in the superior lease to, here specify any covts in the head lease wch are to be pformed by lessor in respt of the demised premes, d if the head lease comprises other ppty, add, "AND WILL (c) pform & observe all the covts, agrmts, & provons on the pt of the origl lessee contd in the superior lease of the sd premes, so far as the same affect the premes comprd thrin & not hby demised." Statutory acknmt d undertakg by A. as to prodon of superior lease, p. 418]. IN WITS, &c.

PREC. X.

Lessor's
covenants.
To pay
superior
rent.

Perform
covenants
in head
lease.

XI.

UNDERLEASE (d) of Business OFFICES to two Persons as
CO-PARTNERS.

PREC. XI.

THIS INDRE made, &c., BETN A., of, &c. (hinafter called the lessor, wch expression shl include, &c., see p. 670), of the one pt, & B., of, &c., & C., of, &c., tradg in co-ptnp under the style of Messrs. B. & Co. (hinafter called the lessees, wch expression shl include, &c.,) of the other pt: WITNETH that in conson of the rent & covts by the lessees & condons hinafter

Parties.

Wit-
nesseth.

(b) See p. 694, note.

(c) In lieu of this covenant the following words may be added at the end of the covenant for quiet enjoyment, "or occasd by any default or neglect by the lessor or any other pson in the pformce or observce of the covts, &c." as in the text.

(d) See p. 715, note, and p. 710, Prec. III.

PREQ. XI.	reserved & contd, the lessor doth demise & lease unto the
Demise.	lessees, ALL THOSE four rooms, offices or appartmts, situate &
Parcels.	being on the — floor at No. — in — Street, in the coy
Right of way.	of —, & now & for some time past in the tenure or occupon
	of the lessees, TOGR WITH free ingress & egress for the lessees,
	their servants & visitors, to & from the sd demised premes
	along & through the common staircases & passages of the sd
	bldg, at all times durg the term hby grted betn the hours of
	— in the mornng & — in the night on every day in the yr
	(Sundays, Good Friday, & Christmas Day, & all other genl
	holidays & days appted for public thanksgivg or prayer
Use of con- veniences.	excepted): AND the use, in common with the other psons
	entled thto, of the water-closets, lavatories, & convenices on
Haben- dum.	the — floor of the sd premes: To HOLD the same UNTO the
	lessees, as jt tenants as pt of their co-ptnp este (a), from the
	— day of — for the term of — yrs. <i>Reservon of rent</i>
Lessees' covenants.	<i>payable half-yrly</i> , p. 676: AND THE LESSEES do hby for them-
	selves, & their respive hrs, exs, ads, & assns jtly & sevly, covt
	with the lessor, that they, the lessees, will, &c., <i>for paymt of</i>
	<i>rent</i> , p. 679; <i>to paint, &c., the inside of premes, substitutg in this</i>
	<i>clause & subsequently, for "lessee," "lessees,"</i> p. 681; <i>to keep</i>
	<i>the inside of premes in repair</i> , p. 681; <i>to deliver up in good</i>
	<i>repair at end of tenancy with fixtures</i> , p. 684; <i>to permit lessor to</i>
	<i>enter & view, & to repair on notice</i> , p. 684; <i>not to make any</i>
	<i>alteron in premes</i> , p. 688; <i>to use as offices only</i> , p. 690: AND
Not to allow clerks to use con- veniences.	ALSO will not allow clerks or servants to use water-closets,
	lavatories, or convenices appropriated to the use of ppals:
	<i>Not to assn or underlet witht licence</i> , p. 691; <i>provo for re-entry</i> ,
	p. 698. AND THE LESSOR doth hby for himself, &c., covt with
Lessor's covenants.	the lessees, <i>to pay rates & taxes</i> , p. 694; <i>to keep in repair, &c.</i> ,
	p. 694, <i>form VI.</i> , or p. 711, <i>form III.</i> ; <i>to insure & rebuild in</i>
	<i>case of fire</i> , p. 695; <i>for quiet enjoymt</i> , p. 695 (b). IN WITS, &c.

(a) See p. 398, note.

(b) See p. 695, note.

XII.

AGREEMENT *for a BUILDING LEASE. The existing BUILDINGS to be pulled down and others erected (c).*

PREC. XII.

AGRMT made, &c., BETN A., of, &c., *lessor*, hereinafter called the lessor, wch expression shl include the pson or psons for the time being entled to rece the rent payable hereunder where the context so admits (*d*), of the one pt, & B., *lessee*, hereinafter called the tenant, wch expression shl include his exs, ads, & assns, where, &c., of the other pt.

Parties.

1. IN CONSON of the rent & agrmts on the pt of the tenant hereinafter reserved & contd, the lessor hereby agrees to grt to the tenant, or his nominee or nominees, at the time & in the mner & subjt as hereinafter mentd, a lease of ALL THAT pce of ground on wch a messe & bldgs are now erected, situate, &c., & with the admeasuremts & abuttals delineated in the plan, &c., TOGR with the messe & bldgs to be erected thereon as hereinafter provd, & the appurts thof FOR THE term of — yrs, to be computed from the — day of —, AT THE yrly rent for the first yr of such term of £—, & for every subseqt yr of £—, payable [quarterly] witht dedon, except for ppty-tax, & to be in other respts accdg to the form of lease contd in the schdle hto (*e*).

Agreement to let

Parcels.

Term.

Rent.

2. THE TENANT shl at his own cost with all reasble speed, pull down & remove the messe, bldgs, & erons now standg & being upon the sd pce of ground (*f*), & erect & build thereon in a substantial & workmanlike mner, with the best materials of their sevl kinds, & in conformity in every respt with plans, elevons, sections, & specificons already approved of & signed by the surveyor for the time being of the lessor, & under the inspon & to the satisfon of such surveyor, one messe of the

Tenant to pull down existing buildings and erect new ones.

(*c*) See agreement for building a house, *ante*, p. 1, and the forms at p. 287 *et seq.* As to building leases under the Settled Land Acts, see the Act of 1882, s. 6 (1), s. 7, and s. 8 (as to which see *infra*, p. 732, note); and as to giving a right of pre-emption, see the Act of 1889.

(*d*) As to this form, see p. 671, note.

(*e*) A full form of lease should be given in preference to an epitome of the covenants and clauses, as the latter is less likely to lead to disputes, and is less protective to the lessor.

(*f*) As to hoardings see the Public Health Acts Amendment Act, 1890 (53 & 54 Vict. c. 59), s. 34.

As to building leases under Settled Land Acts.

FORM. XII.

first-rate class of bldg with all pper & suitable outbldgs, offices, convenices, & appurts, & shl expend in bldg such messe & premes not less than the sum of £——, the sd messe to be built & covered in on or bfe the —— day of ——, & to be completely finished fit for habiton on or bfe the —— day of ——, & shl not at any time durg the term hby agrd to be grted erect or build, or permit to be erected or built, upon any pt of the sd pce of ground hby agrd to be demised any messe, bldg, or eron, not conformable to the plans & elevons previously approved & signed by the sd surveyor, nor make any alteron in the external elevon of the sd messe, bldgs, & erons, witht the previous consent in writg of the lessor.

Old
materials
to belong
to tenant.

3. ALL THE materials of the sd messe, bldgs, & erons wch are to be pulled down & removed as afsd shl become the absolute ppty of the tenant.

Tenant not
to create
nuisance.

4. THE TENANT shl not durg the progress of the works or aftwds create or allow any unnecy nuisance upon the sd premes.

Compliance
with Build-
ing Acts,
&c. (a).

5. THE TENANT shl at his own expse in the exon of the works afsd comply in all respts with the Bldg & other Acts, & the regulons of the local authorities, & exte & do all works & things required by any such Acts or regulons relative thto, & pay & indemnify the lessor agst all fees, chges, penalties, claims, & expses to be made or incurred thrunder, or wch may be payable for obtaing the approval of the local authorities to any of the works or mres afsd.

Lessor may
enter and
view.

6. THE LESSOR or his agent may at all reasble times enter upon the sd premes & view the state & progress of the sd bldgs & works & the materials used & intd for use thrin.

Tenant not
to assign.

7. THE TENANT shl not assn, sub-let or pt with the benefit of this agrmt witht the previous consent in writg of the lessor.

Power of
re-entry.

8. PROVD ALWAYS that in case the sd messe & premes hby agrd to be erected shl not be erected, covered in, completely finished & made fit for habiton within the respive periods hinfte limd for such respive pposes accdg to the stipulons hinfte contd [in wch respt time shl be of the essce of this agrmt], or in case of any breach of any of the agrmts or stipulons hrin contd & on the pt of the tenant to be pformed

(a) See the London Building Act, 1894 (57 & 58 Vict. c. ccxiii.). The orders as to appeals under the Act are printed in 39 Sol. J. 328.

or observed (b), [or in case any event shl happen upon wch the lessor wd be entled to re-enter upon the sd premes if the sd lease had been actually exted by virtue of the provo for re-entry to be thrin contd,] then & in any such case this agrmt shl, at the option of the lessor, cease & determine, & the lessor may re-enter upon & take posson of the sd pce of ground & premes togr with all bldgs & erons, materials, plant, & things thron (c), witht makg to the tenant any compenson or allowce for the same.

PREBC. XII.

9. PROVD ALSO that in case any such default as afsd shl be made in erectg, coverg in, or completg the sd messe & premes within the respive periods afsd, & the lessor shl elect to enforce the specific pformce of the agrmt, he shl be entled to fix such extended period or periods for the erectg, coverg in, & completg resply of the sd messe & premes as he shl think fit, & in such case this agrmt shl be read & construed as if the period or periods so fixed had been origlly inserted hrin instead of the period or periods hinfie fixed in that behalf.

Option to lessor to extend time for completion.

10. THE SD LEASE shl be grted & the tenant shl accept the same & exte a counterpt thof when & so soon as the sd messe shl have been completely finished & made fit for habiton, & the other works hinfie agrd to be exted by the tenant shl have been exted in accordce with the stipulons hinfie contd, & a certfe to that effect, signed by the sd surveyor, shl have been produced to the lessor, such lease & counterpt to be prepared by the solor of the lessor, & the tenant shl not require any abstract or evidece of the title of the lessor (d).

Lease to be executed on completion.

11. UNTIL SUCH lease shl be grted, the tenant shl be deemed to be tenant at will to the lessor at the rent agrd to be reserved thby, wch rent & all rates & taxes to become payable in respt of the sd pce of ground & premes, shl be pd by the tenant, & all covts & agrmts on his pt agrd to be contd in such

Until execution of lease, tenant to pay rent and perform covenants (e).

(b) See *Lowther v. Heaver*, 41 Ch. D. 248.

(c) See p. 7, note (g); p. 9, note (b).

(d) See p. 714, note.

(e) If the contract to pay the rent, &c., until the lease is granted were absolute, the intended lessee would be bound by it, although no tenancy were created and he never took possession, *Marquis of Camden v. Batterbury*, 5 C. B. N. S. 808, 7 C. B. N. S. 864; *Adams v. Hagger*, 4 Q. B. D. 480. It has been usual in clauses of this kind expressly to negative the creation of a tenancy until the execution of the lease, and to provide that in the mean-

As to excluding tenancy before lease granted.

PREC. XII. lease shl so far as the same shl be applicable be pformed by the tenant as though such lease had been actually grted, & so that the lessor shl have & be entled to all such remedies by distress, action, & orwise, for recoverg rent in arrear, & for breach of any of the covts or agrmts afsd on the pt of the tenant, as if the sd lease had been grted.

Provision
for death
of tenant.

[12. IN CASE the tenant shl die bfe the sd messe shl have been completely finished & made fit for habiton, & the other works hinbfe mentd shl have been exted accdg to the stipulons hinbfe contd, the lessor shl be entled at his option eir to require this agrmt to be pformed by the exs or ads of the tenant, or to determine this agrmt by givg a notice in writg in that behalf to such exs or ads, & in case he shl elect to determine the same he shl pay to the exs or ads of the tenant the amt wch shl be certified by the sd surveyor to have been pperly expended by the tenant in or about the bldg of the sd messe & the exon of the other works afsd after deductg the value of the old materials.]

Costs.

13. THE costs of & incidental to the preparon & exon in duplicate of this agrmt, & of the sd lease & a counterpt thof, shl be borne & pd by the tenant. IN WITS, &c.

The Schdle above refd to.

[*Form of Lease.*]

time a yearly sum equivalent to the rent should be paid and recoverable by distress as if it were rent; but a power of distress not being for rent is invalidated by the Bills of Sale Acts, see *Pulbrook v. Ashby*, 56 L. J. N. S., Q. B. D. 376; 35 W. R. 779, above, p. 683, note. It is better to provide, as above, that in the interim the intended lessee shall be tenant at will at the rent agreed to be reserved, which will carry with it the common law right of distress (*Anderson v. Midland Railway Company*, 30 L. J. Q. B. 94); and will also enable recourse to be had to the summary remedy for ejecting the tenant provided by the R. S. C., Order III., r. 6, and Order XIV., r. 1, which, if the relation of landlord and tenant were excluded, would not be available.

XIII.

AGREEMENT *for BUILDING LEASES with VARIATIONS, and*
 OPTION *to Lessee to PURCHASE the Freehold (a).*

PREC. XIII.

AGRMT made this — day of — BETN A. of, &c.,
 hereinafter called the lessor, wch expression shl, &c., *as in last precedent*, of the one pt, & B., of, &c., hereinafter called the tenant, wch expression shl, &c., of the other pt.

Parties.

1. THE TENANT may enter for the ppose only of bldg as hrin
 stipulated upon the pces or plots of ground & hds shown in

Tenant
may enter
and build.

(a) The following clauses may be substituted for some of those in the
 text:—

Variations.

“THE LESSOR hby agrees with the tenant to demise to him
 or his nominees at the times & in mner & subjt as hereinafter
 mentd, ALL THAT pce of ground situate, &c., togr with the
 sevl houses intd to be erected thron with the appurts thof
 inclusive [exclusive] of the site of the intd roads, To HOLD the
 same Unto the tenant or his nominees for the term of ninety-
 nine yrs computed from the — day of —, Paying in respt
 of the sd pce of ground & premes the sevl yrly rents or sums
 follg (that is to say) from the date of this agrmt until the —
 day of — the rent or sum of £—, from the — day of,
 &c., the rent or sum of —, &c. (*increasg yrly till £—
 is reached*), such respive rents or sums to be pd by eql qtrly
 paymts, &c.

Agreement
to demise.

Parcels.

Haben-
dum.

THE TENANT shl build, &c., on the sd pce of ground as many
 private dwg-houses & shops as will produce when leased as
 hinfte provd the sd total aggregate rent of £—.

Tenant to
build
houses.

THE TENANT shl not be entled to require any lease to be
 grted to him or his nominees until he shl have built & roofed
 in the house or houses intd to be comprd in such lease, &c.

Lease
not to be
granted
before
houses
roofed (b).

THE TENANT shl be entled to a septe lease of any one or
 more not exceedg — houses hby agrd to be built with the
 ground & appurts thto resply belonging at a fair apportioned
 pt of the sd rents to be approved by the lessor or his surveyor,
 & to be not more in respt of the house or houses comprd in
 each lease than one — pt of the rack-rent value thof when
 completed, nor less than £— on any one lease.”

Tenant to
have sepa-
rate leases.

(b) See *Lowther v. Heaver*, 41 Ch. D. 248.

PREC. XIII. — the plan hto annexed & thrin coloured —, situate in the parish of —, & coy of —, on the north side of a new road called or intd to be called, &c., & containg — acres or thrabouts.

Tenant to
build not
less than
— houses.

2. THE TENANT shl erect, cover in, & complete fit for habiton upon the sd pces of ground in a good & substantial mner, & with the best new materials of every description in accordce with plans, drawgs, elevons, & specificons already, or, “to be prepared by & at the expse of the tenant & to be” approved of by the surveyor of the lessor, & to the reasble satisfon, in all respts, of such surveyor for the time being, not less than — houses with pper & suitable offices & outbldgs, vaults, areas, drains, & fences, on the sites & in the posons marked out & indicated by boundary lines coloured — in the sd plan, or, “to be approved by the sd surveyor.”

Houses to
be covered
in within
certain
dates.

3. THE sd houses shl be erected & covered in within the times follg, namely [ten] thof bfe the — day of — now next, —more bfe the — day of —, & the remaing — bfe the — day of —, & every house shl be completely finished & ready for habiton within — calr months after the time appted for coverg in.

Cost of
houses (a).

4. THE TENANT shl expend in the eron of each house [in a main road] the sum of £— at least in labour & materials [& of each house in other roads the sum of £— at least, & questions as to wch are main roads to be settled by the sd surveyor].

Tenant to
make a
road.

5. THE TENANT shl also at his own sole expse bfe the — day of — construct & make along the front of the sd pce of ground coloured — in the sd plan, to the satisfon of the sd surveyor, a pper roadway & pathway of the respive widths of — feet & — feet, or, “construct & make the roads shown on the sd plan & thron coloured — with pper sewers thrunder & side junctions where required in accordce with plans & specificons to be approved by the sd surveyor & to his satisfon.”

Tenant to
pay share
of expnze

6. THE TENANT shl repair & maintain, or, “pay & contribute a proportionate share of the expse of repairg & maintaing,”

(a) Under the Settled Land Act, 1882, if the land is leased in lots, the buildings must be of the yearly letting value of at least five times the ground rent; see s. 8, sub-sec. (3) (iii); see *infra*, p. 734, note (b).

the sd roads & foot-pavemts & main sewers [& lightg & waterg the roads,] until undertaken by the local authority, [such proportionate pt to be fixed by the sd surveyor, but not to exceed — in the pound on the rateable value.]

PREC. XIII.

of main-
taining
roads, &c.

7. THE SD houses shl be private dwg-houses only except that the tenant shl be at liberty to erect — shops & no more, & one first-class hotel or tavern.

As to class
of houses.

8. THE TENANT shl not, durg the progress of the works or aftwds, set up any steam engine, or burn bricks or clay or cement, or create or allow any unnecy nuisance on the premes, or any pt thof. And no excavon shl be made, except for the ppose of digging foundons or makg sewers, & any gravel, chalk, or sand raised or dug up, shl not be disposed of or removed by the tenant, but shl be deposited for the use of the lessor as directed by the sd surveyor.

Tenant not
to cause a
nuisance,
&c.

9. *Complice with Bldg Acts, p. 728, clause 5.*

10. THE TENANT shl within one month after roofing in each house insure the same with the outbldgs thof agst fire in the — Insce Office, or in some other office to be approved [appted] by the lessor to the amt of three-fourths of the value thof in the jt names of the lessor & tenant, or, “in such names as the lessor shl direct,” & shl thrafter keep the same so insured & upon reqt produce to the lessor or his agent the poly & rect for the last premium of every such insce, & in case of destron or damage by fire, shl forthwith lay out the insce moys, & in case of the deficiency thof shl expend any further sums required in rebldg & reinstatg the same accdg to the origl plan & elevon thof previous to such fire.

Tenant to
insure and
expend
insurance
monies in
rebuilding.

11. *Power to lessor to enter & inspect bldgs, &c., as in last precedent, clause 6 (b), & not to assn as in last precedent, clause 7.*

12. WHEN & as each of the sd houses shl have been built & covered in [& the fence walls thof, & the area in front thof, & the gutters, stack pipes, & drains made & completed,] or, “shl have been completely finished ready for habiton,” or, “the sum of £—— shl have been expended on each house,” in accordce with the stipulons hinfie contd, [& a certfe to that

Lessor to
grant
leases when
houses
finished.

(b) If the tenant has only a power of entry to erect the buildings and no estate in the land until the leases are granted, this clause is unnecessary.

PREC. XIII. effect, signed by the sd surveyor, shl have been produced to the lessor], the lessor shl, by one or more deed or deeds, grt to the tenant, or his nominee or nominees, a lease or leases of such respive houses with the ground belonging thto, & the appurts thof, includg half the road or roads adjoining each house, *or*, "but exclusive of the roads," (a) For a term of ninety-nine yrs from the — day of — At THE yrly rent for each house follg (namely), £—— for the yr endg the — day of — £—— for the yr endg, &c., & £—— p.a. for every other yr of the sd term, payable [qtrly] on the — day of —, &c., the first paymt to be made on the — day of —. And in the meantime, & until the sd respive rents shl commence, the sd respive leases shl be at the yrly rent of a peppercorn, & in case more than one house is comprd in a lease the lease shl be so framed as to make each house liable in respt of its own rent & covts only.

Term.

**Reserva-
tion of
rent (b).**

**Form of
leases (c).**

**Tenant not
to call for
lessor's
title (d).**

**Prepara-
tion and
costs of
leases.**

13. SUCH LEASE shl be in the form, & contain the condons & provons set forth in the schdle hto, with such modifcons (if any) as the deaths of pties & other circes may render necy.

14. THE TENANT shl whenever required by the lessor accept & exte a counterpt of the lease or leases hby agrd to be grted upon the terms hrin expd, & shl not call for the title of the lessor.

15. THE SD LEASES & counterpts shl be prepared by the solor of the lessor at the cost of the tenant [such cost not to exceed £—— for each lease & counterpt, exclusive of stamp duty & plans [& the cost of registron] if one house only be included in the lease, & the further sum of £—— for every addonal house so included], *or*, " & all expses attendg the preparon & exon by all pties of this agrmt in duplicate, & of the sd sevl leases & counterpts shl be borne by the tenant."

**As to the
rent to be
reserved on
building
leases
under
Settled
Land Act.**

(a) See Elphinstone, N. & C. Interp., p. 183.

(b) As to the rent to be reserved on building leases granted under the Settled Land Act, 1882, see s. 7, sub-s. (2), and s. 8, sub-ss. (2) and (3); and especially the requirements of the latter sub-section where the land comprised in the building agreement is leased in lots. It is not easy to see the object of those requirements, and in some cases compliance with all of them would be impossible, if indeed they are not absolutely inconsistent with one another, or with s. 7 (2).

(c) See p. 727, note.

(d) See p. 714, note.

16. IF & WHEN leases sh^l have been gr^ted to the tenant or his nominees of a suff^t no. of houses to secure by the ground rents th^y reserved the sd total aggregate rent of £——, the lessor sh^l, subj^t to the prov^ons & stipul^ons hr^oin cont^d, gr^t one or more lease or leases to the tenant or his nominees of the portions (if any) of the sd land remaⁱng undemised togr with any house or houses erected thron (e) at the yrly rent of £1, or in case more than one such lease sh^l be gr^ted then at the yrly rent of £1 for each such lease, & so that in case more than one house is compr^d in any such lease such rent of £1 sh^l not be apportionable betⁿ such houses Provd that all the restrictive & other prov^ons as to bldg & user of the premes & as to the form of lease & orwise wch are hr^oin cont^d & wch may be applicable sh^l apply to the land & houses leased under the psnt clause in the same mⁿer as to the residue of the land & houses compr^d in this agrmt.

PREC. XIII.

When rent secured by some leases, remainder of premises to be let at nominal rent.

17. UNTIL LEASES sh^l have been gr^ted of all the land h^y agr^d to be demised the tenant sh^l be deemed to be tenant at will to the lessor of the sd land or such pt th^of as from time to time sh^l remain undemised, & sh^l as far as circes will admit be liable & subj^t to the same rents & other paymts, covts, restrons, & prov^ons as he wd be subj^t to if a lease of such remaⁱng pt psuant to the terms of this agrmt had been actually gr^ted, & so that the lessor sh^l have all such rts & powers for the recovery of any arrears of rent or other moys wch may be due under this agrmt by distress on such undemised premes, & other usual means as if such lease had been gr^ted.

Until leases granted, rent to be paid (f).

18. IF THE TENANT sh^l make default in erectg, coverg in, & completg any of the sd houses within the respive times, & in mⁿer afsd, or if the tenant or his nominee sh^l neglect or refuse to accept any of the sd leases, & exte a counterpt th^of, or to pay the reasble chges for preparg the same, within one calr month after he sh^l be req^ted so to do by or on the pt of the lessor, [in any of wch respts time sh^l be of the essence of this agrmt], or, “sh^l in any respt fail to pform or observe this

Power to re-enter on default (g).

(e) If the agreement is entered into under the Settled Land Act, 1882, a “residue” lease cannot be granted of land not built upon, nor agreed to be built upon, see *Re Sabin*, W. N. 1885, 197; Hood & Challis, p. 204.

(f) See p. 729, note.

(g) See p. 698, note (a).

PRMO. XIII. agrmt," then & in any such case the lessor shl be at liberty to re-enter upon & take posson of such pt of the sd premes whof a lease or leases shl not have been grted as afsd, & all bldgs, erons, & bldg materials, & plant thron (a), witht makg to the tenant any compenson or allowce in respt thof, & this agrmt shl thrupon as to the premes so re-entered upon cease, but such rt of re-entry shl be deemed a cumulative remedy, & shl not prejudice any rt of action or other remedy of the lessor for the recovery of any rent or moys due to him from the tenant, or in respt of any breach by the tenant of this agrmt.

Recital. AND WHAS it has been agrd that the tenant shl have the option of pchasing the freehd of the sd pces of land at any time within —— yrs from the date hrof, at the price & under the condons hinafter mentd, if he, the tenant, shl have duly pformed the agrmts on his pt hinfte contd: NOW IT IS HBY FURTHER AGRD,

**Agree-
ment.**

**Power for
tenant to
purchase
the free-
hold (b).**

19. IN CASE the tenant shl within —— yrs from the date of this agrmt give to the lessor —— calr months' notice in writg of his desire to pchase all the pces of land hinfte mentd, or such of them as shl be specified in such notice, & shl up to the date of such notice, & subseqtly to the time of such sale, have duly pformed the agrmts on the pt of the

(a) See p. 7, note (g).

(b) Compare the form at p. 703, and see the note thereto; and as to leases under the Settled Land Acts, see the Act of 1889 (52 & 53 Vict. c. 36). The following provision is sometimes inserted instead of that in the text:—

**Option to
lessor to
purchase
improved
ground
rents.**

"In case the tenant shl grt or agree to grt any underlease or underleases of any pt or pts of the sd land, & any house or houses erected thron, at an improved ground-rent, the tenant shl forthwith offer to sell every such improved ground-rent to the lessor at a price eql to twenty yrs' pchase of such rent, & on his acceptce of such offer, & on paymt of the sd pchase-moy shl assn the same to him, or as he shl direct. But in case the lessor shl decline to pchase any such improved ground-rent the tenant, in case he shl duly pform & observe this agrmt up to that time, shl be entled to have a convce of the freehd intt of the lessor in the land comprd in the underlease reservg such improved ground-rent, with any bldgs thron, at the price or sum," &c., as in the text, & add any of the other clauses in the text wch are appropriate.

tenant herein contd, the lessor shall sell to the tenant the inheritance in fee simple in possession, free from incumbrances, of the said pieces of land, or such of them as shall have been specified in such notice, with any buildings which may be thereon, at the price or sum for the whole of the said pieces of land of £—— (being twenty-five years' purchase of the said total rent of £—— hereby made payable), together with interest at the rate of —— p.c. p.a. on the said sum of £—— as from the date of the expiration of such notice & up to the time of completion, & so on in proportion for any portion less than the whole, according to the quantity of land purchased, & subject to the conditions hereinafter expressed.

PREC. XIII.

20. THE TENANT may avail himself of the said option of purchasing as to portions of the said land, & at different times, but so that on each occasion (except the last, when the purchase-moy shall be the residue of the purchase-moy for the whole) the purchase-moy shall not be less than £——, & on the completion of each separate purchase the rent for the remainder of the land shall be reduced by a sum equivalent to four p.c. on the purchase-moy paid.

Purchase money for any portion not to be less than £——.

21. THE TITLE of the lessor as owner in fee simple free from incumbrances of the premises up to the execution of this agreement shall be considered as accepted, & the lessor shall not be under any obligation to enquire into the title to the leasehold interest hereby created or be under any liability by reason of any defect or want of title in the lessee or person to whom such sale & assurance as aforesaid is made.

Title to freehold accepted.

22. *Add any special conditions required as in ordinary cases, see CONTRACT FOR SALE.*

23. THE DEED or deeds of conveyance shall be executed in duplicate, & shall contain covenants on the part of the purchaser framed so as to be binding as far as may be on all persons claiming under him for the portion of the vendor & his adjoining estate coloured —— on the said plan, as follows, *specify restrictive covenants*, & shall also contain such other provisions as may be reasonably required by the lessor for preserving & securing the observance & performance of such covenants.

Deeds of conveyance to be executed in duplicate, and to contain restrictive covenants (c).

[24. *Arbitration clause*, p. 704.] IN WITNESS, &c. (d).

[The Schedule above referred to.

Form of Lease.]

(c) As to the frame of such covenants, see pp. 424 and 285 *et seq.*

(d) The following are the forms of clauses in an agreement for building

XIV.

PREC. XIV.

LEASE made in PURSUANCE of a Covenant for RENEWAL
by Joint Tenants of COPYHOLDS under LICENCE with
Covenant for RENEWAL.

PARTIES, A. & B. (hinafter called the lessors, wch expression,
&c., see p. 670), 1: C. (hinafter called the lessee, wch

leases as to advances to be made by the lessor to the tenant as the buildings
progress; the charge in brackets would make the agreement subject to
ad valorem duty as a mortgage, but (being equitable) only at the rate of 1s.
per cent. under the Stamp Act, 1891, Schedule, MORTGAGE.

Advances
by lessor
to tenant.

“THE LESSOR shd durg the progress of the sd bldgs & works
make advces to the tenant, at intt, in mner, & to the extent
provd in the schdle hto, & the tenant shd repay to the lessor
all moys wch shd be so advced, with the intt thron, & all costs
incurred by him in respt of such advces within — yrs from
the date of this agrmt.” [If the tenant has any intt in the ppty
wch is capable of being chged bfe the leases are grted, add, “&
such moys, intt, & costs shd until repaymt be a chge on the
intt, if any, of the tenant in the premes hby agrd to be
demised.”] Provd that the lessor shd not be obliged to make
any such advces except to the tenant psonally & in the event
of his assng the benefit of this agrmt or havg a receivg order
made agst him or makg any arrangemt or compon with his
credors or death such obligon shd cease.

“WHEN & as each of the sd messes shd have been fully
completed, ready for habiton, in accordce with this agrmt, & a
certife to that effect signed by the sd surveyor shd have been
produced to the lessor, & so soon as all moys advced on that
messe, & the intt thron, & all costs incurred in respt of such
advce, shd have been duly pd to the lessor, but not bfe, the
lessor shd by deed grt, &c., remr of clause 12, as to grantg
leases, p. 733.

“The Schle above refd to.”

“WHEN EACH house is covered in, & the brick parton below
completed, & the wooden framg for the partons above fixed,
the sash-frames built in, the external walls completed, & the
chimneys & chimney-pots put on, the sum of £ — per
house to be advced at intt at the rate of — p.c. p.a. payable
half-yrly.”

“WHEN EACH house is finished accdg to this agrmt, & ready

expression, &c.), 2. WITNETH that in psuance of the covt in this behalf contd in a certain indre of lease, dated, &c., & made, &c., & in conson of the yrly rents & covts & agrmts on the pt of the lessee hinafter reserved & contd, & by virtue of a licence obtd from the lord of the manor of —, the lessors do respby hby demise unto the lessee, *pcels*, to wch sd premes the lessors were admitted at a ct holden for the sd manor on the — day of — on the surrender of X.: To HOLD the same premes Unto the lessee, from the — day of —, for the term of — yrs; *Reservon of rent*, p. 676; *Covts by lessee*, here insert the pper covts; *Provo for re-entry*, p. 698. *Covts by lessors*, for quiet enjoymt, p. 695: AND THAT they, the lessors, or their assns, will, previous to the expiron of the sd term of — yrs, endeavour to procure a licence from the lord of the sd manor of — to demise the sd premes hby demised for the further term of — yrs, to commce from the expiron of the sd term hby grted, & will, after they have obtd such licence, exte anor lease of the sd premes to the lessee, for such further term of — yrs; but in case the lord of the sd manor shl refuse to grt such licence, then that the lessors will endeavour to obtain a licence to demise the sd premes for such shorter term as the sd lord shl be disposed to grt, & after such licence shl be procured, will exte a further lease of the sd demised premes to the lessee, for such further term as shl be mentd in such licence to commce from the expiron of the term hby grted: AND WILL, from time to time until the term of — yrs from the commcemt of this psnt demise shl be run out, endeavour to obtain a licence to grt a further lease or leases of the sd premes unto the lessee, & will grt such lease or leases accdly until the whole of the sd term of — yrs shl be run out; but in case the sd lord of the sd manor shl refuse to grt any such licence, then that the lessors will, from time to time until the sd term of — yrs shl be run out, grt such further leases of

PREC. XIV.

Wit-
nesseth.

Demise.

Parcels.

Haben-
dum.

Covenants
by lessors.

To apply
for licence
to grant
renewed
lease,

and to
execute
renewed
lease,

and
further
renewals.

On failure
to obtain
licences

to grant
such re-

for habiton, with all necy stoves, fixtures, & fittgs, pperly fixed, & the fences completed, & the drains pperly made & connected, the further sum of £—— per house, to be advced at intt at the like rate payable half-yrly.”

“THE TOTAL advces not to exceed at one time £——, exclusive of intt.”

PREO. XIV. the sd premes unto the lessee, as by the custom of the sd
 manor they may be warranted in doing witht incurrng a
 newals as forfeiture of the sd premes, so as to complete the sd term of
 they can. — yrs as afsd ; all such licences to be obtd by & at the expse
 Costs of of the lessors, & every new lease & the counterpt thof to be
 renewals. prepared by the lessors at the expse of the lessee, & to be at
 the same rent & subjt to the same covts & condons as are
 contd in these psnts, except the covt for renewal, but to contain
 in lieu thof such covt for renewal as the circes of the case may
 require : AND THE lessee hby covts with the lessors, that the
 lessee will duly exte & deliver to the lessors a counterpt of
 every such new lease. PROVD ALWAYS that in the event of the
 sd copyhd premes being enfranchised, then the covt for renewal
 hinfte contd shl take effect as an absolute covt : PROVD also,
 that in the event of a re-entry by the lessors under the provo
 or condon in that behalf hinfte contd, then the sd covt for
 renewal shl become void. IN WITS, &c. (a).

Covenant
 by lessee
 to execute
 counter-
 parts.
 Proviso in
 case of
 enfran-
 chisement.

XV.

PREO. XV.

LEASE for twenty-one years of a VILLA and Land (b) in
 the COUNTRY, part being FREEHOLD and part COPYHOLD.
 The LICENCE of the LORD of the Manor NOT having
 been OBTAINED (c).

Wit-
 nesseth.
 Habendum
 for free-
 holds to
 lessee for
 twenty-one
 years.
 For copy-
 holds to
 lessee for
 one year.

PARTIES, A. (hinafter, &c., see p. 670), 1 ; B. (hinafter, &c.),
 2. WITNETH, *demise to the lessee of freehds & copyhds* : To
 HOLD all such pts of the sd premes as are of freehd tenure,
 UNTO the lessee, for the term of twenty-one yrs from the date
 of these psnts : AND TO HOLD all such pts of the sd premes as
 are of copyhd tenure, UNTO the lessee, for the term of one whole
 yr from the date of these psnts (d). *Reserron of rents*, p. 676.

(a) As to covenants by trustees in a lease, see p. 696, note ; and as to
 covenants for renewal, see p. 697, note.

(b) As to the land, see the Agricultural Holdings Act, 1883 ; and as to
 small holdings, 50 & 51 Vict. c. 26 ; and *infra*, LEASES (AGRICULTURAL).

(c) For variations, see Precedent VIII., p. 720.

(d) A copyholder cannot in most manors grant a lease for more than one
 year without licence from the lord.

The covenants by the lessee will be the same as in Precedent VIII. with the following variations; in the covenant to paint the outside say "of the said house, stables, & outbuildings," in the covenant to keep in repair, add after the words, "walls, fences," the words, "posts, pales, rails;" add also covenant to maintain garden & pleasure grounds, p. 682; if necessary, covenants as to cultivation, &c., of arable or meadow land (if any) see LEASES (AGRICULTURAL); not to commit waste, p. 689; [not to burn bricks, &c.]; Power of re-entry, p. 698; Lessor's covenant for quiet enjoyment, p. 695: AND ALSO will at the expiration of the term of one year, for which the said copyhold premises are demised, if this demise shall not have been determined under the power of re-entry hereinbefore contained, at the request of the lessee, by deed granted, if the licence of the lord or lady of the said manor can be obtained, a lease of the said copyhold premises for a term expiring on the — day of —, the end of the twenty-one years, but if such licence cannot be obtained, then, if & so far as the custom of the said manor will admit, a further lease of the said copyhold premises for the term of one year, & so on at the expiration of every year until the — day of —, i.e., one year before the expiration of the term of twenty-one years, unless these points shall have been sooner determined by re-entry under the power in that behalf hereinbefore contained, & every such lease shall operate in such manner that the whole of the said premises hereby demised shall be held under & subject to the same rents, covenants, & conditions as are hereby & herein reserved & contained so far as the same shall be applicable. And the lessee shall execute a counterpart of every such lease, which together with the counterpart shall be prepared by the solicitors of the lessor at the cost of the lessee. IN WITNESS, &c.

PREC. XV.

Covenant
by lessor
for renewal
of copyhold
lease.

XVI.

AGREEMENT for LEASE of a PUBLIC HOUSE. A PREMIUM being paid by the LESSEE, and secured by MORTGAGE. PREC. XVI.

PARTIES, A. of, &c., hereinafter called the lessor, 1: B. of, &c., hereinafter called the lessee, 2.

WHY IT IS AGREED as follows:—

1. THE LESSOR shall grant & the lessee shall take a lease of ALL Agreement for lease.

PREC. XVI. THAT public-house or tavern known as — with the back yard belonging thto, situate at, &c., togr with the fixtures, fittings, utensils, & things now in or upon the same, from the — day of —, For THE term of — yrs, At THE yrly rent of £ — payable qtrly on the usual qtr days, the first paymt to be made on, &c., AND in conson of the premium of £ — payable by the lessee as hinafter mentd.

Payment of premium.

2. THE LESSOR hby acknowes the rect from the lessee by way of deposit of £ — pt of the sd premium, & £ — further pt of the sd premium shl be pd by the lessee to the lessor on the — day of —, & £ — the residue thof shl be seed to the lessor by a mtge of the sd lease & the trade & other fixtures & fittings on the demised premes (a).

Lease.

3. THE SD LEASE & a counterpt thof to be exted by the lessee, & the sd mtge shl be prepared by Mr. — of —, the solor of the lessor & shl be in the forms usually adopted by the lessor for such respive instrumts, with such varions as the case may require (b). The lessee shl pay the costs [not exceedg £ — exclusive of stamp duty] of & incident to this agrmt & the sd lease & counterpt & mtge.

Enquiries as to solvency of lessee.

4. THE LESSOR shl forthwith make enquiries into the character & solvency of the lessee who hby names Mr. — of —, & Mr. — of — as his referces. If the result of such enquiries shl in the opinion of the lessor be unsatisfactory, he shl be at liberty to rescind this agrmt & thrupon shl return to the lessee the sd deposit after deductg £ — for expses.

Forfeiture on non-performance of agreement.

5. IF THE LESSEE fail to pform this agrmt he shl forfeit to the lessor the sd deposit, & shl also pay to the lessor the sum of £ — as liquidated damages. IN WITS, &c.

(a) See *infra*, p. 744, note (a).

(b) Covenants personally to reside and conduct the business, and not to assign without licence, were held not to be usual covenants; *Re Lander*, [1892] 3 Ch. 41.

XVII.

LEASE of a PUBLIC HOUSE by a firm of BREWERS. A
PREMIUM being paid by the LESSEE (c).

PREC. XVII.

PARTIES, A. & B., tradg under the name or firm of, &c. (hinafter called the lessors, wch expression, &c., see p. 670), 1; C., licensed victualler (hinafter called the lessee, wch expression, &c.), 2: WITNETH that in conson, as well of the sum of £—— on the exon hrof pd by the lessee to the lessors (the rect whof is hby acknowed), as also of the rents, covts, & condons, &c., the lessors do, & each of them doth, hby demise unto the lessee, ALL THAT messe or tavern, with the outbldgs, yard, & appurts thto belongg, called The ——, situate, &c., TOGR WITH the fixtures & fittgs specified in the schdle hrunder written, & togr with the licences now or hrafter attached to the premes for keepg the same open as a tavern or public-house; *habendum*, p. 676; *reservon of rent*, p. 676. AND ALSO, *insce rent, mutatis mutandis*, p. 678. AND ALSO as a further rent the sum of £—— in any & every yr in wch the lessee shl (contrary to his covt hinafter contd) directly or indirectly deal

Wit-
nesseth.

Demise.
Parcels.

Penal rent
for selling
liquors not
supplied
by lessors
(d).

(c) As to leases of public houses by a tenant for life who has conscientious objections to the sale of intoxicating liquors, see *Re Somers*, 39 Sol. J. 705.

(d) As to contracts binding the lessee to deal with the lessor, see 5 Dav. Prec., p. 135, note; *Luker v. Dennis*, 7 Ch. D. 227; *Edwick v. Hawkes*, 18 Ch. D. 199; *Clegg v. Hands*, 44 Ch. D. 503. Where the brewers are mortgagees in possession, they ought not to let the house as tied, and may be surcharged the extra rent they might have obtained by letting it free; *White v. City of London Brewery Co.*, 39 Ch. D. 559; 42 Ch. D. 237. Sometimes a larger rent, including the penal rent, is reserved, with a proviso for its reduction so long as the lessee performs his covenant to deal exclusively with the lessors, as follows:

“PROVD ALWAYS that if & so long as the lessee shl (psuant to his covt hinafter contd) pchase from & deal with the lessor, &c., for, all the porter, &c., wch shl be consumed, sold, or disposed of in or upon or sent from the sd demised premes the lessor shl be entled to deduct from each qtrly paymt of the sd rent, the sum of £——.”

Proviso for
reduction
of rent if
lessee deals
with lessor.

Sometimes a penal rent is reserved in respect of breaches of covenant generally, see p. 679, form ix.

The following is another form of penalty for breach of the above covenant:—

“THE LESSEE will pay to the lessors for all malt liquors, Lessee to

PREC. XVII. with any pson or psons other than the lessors, or their succors in business [or nominees] for any porter, stout, ale, beer, or other malt liquors, [British & foreign spirituous liquors, cordials & compounds of every description] wch shl be sold or disposed of or consumed in or upon the sd demised premes, or shl be brought upon the sd premes to be so sold, disposed of or consumed, or in wch yr the lessee shl sell or dispose of, or permit the sale, disposal, or consumption upon the sd premes of any such articles other than such as shl have been pchased or taken of the lessors, or their succors in business [or nominees], every such last-mentd addonal rent to become payable on the qtrly day for paymt of rent under this demise next ensuing after such dealg, sale, disposal, or consumption as afsd, & to be pd qtrly durg the residue of the then current yr, & all the sd rents to be pd witht any dedon whatever (except the landlord's ppty tax) (a). *Covts by lessee*

pay liqui-
dated
damages
for selling
liquors not
supplied
by lessors.

&c., pchased from any pson other than the lessors a sum eql to — p.c. of the invoice price usually chged by the lessors for goods or articles of a like class & description, accdg to the prices set forth in the schdle hto, & as for liquidated damages, & not as a penalty, wch sum or damages shl be payable by the lessee forthwith on demand in writg of paymt thof being made by the lessors."

As to
power of
distress
for liquors
supplied.

(a) The common clause giving the brewer a power of distress for non-payment of the debt for liquors supplied has been determined to be wholly void under the Bills of Sale Acts, 1878 and 1882; *Pulbrook v. Ashby*, 56 L. J. N. S. Q. B. D., 376; 35 W. R. 779. This power is therefore omitted and a charge on the leasehold interest and tenant's fixtures substituted (see p. 747). Other methods which have been suggested for creating an implied right of distress are (a) to reserve a high nominal rent reducible on payment of the debt for liquors, or (b) to reserve moneys due on the liquor account as additional rent, as below; but both these must be regarded as experiments, having regard to s. 6 of the Bills of Sale Act, 1878; see as to the construction of that section, *Pulbrook v. Ashby*, *ubi supra*; *Re Willis*, 21 Q. B. D. 384.

Reserva-
tion of such
moneys by
way of
rent.

"AND ALSO as a further rent all moys to become due to the lessors from the lessee for any porter, &c., as above, wch shl be supplied by the lessors to the lessee durg the sd term, such last-mentd rent to become due immedly on such articles being supplied, & to be taken in or towards satisfon of such moys."

Another expedient is to require a deposit, as in the following clause:—

Provision
for deposit
by lessee.

"BFE ENTERG into posson of the sd premes the lessee shl deposit with the lessors as secy for the paymt of any moys

to pay rents, p. 679; *rates & taxes*, p. 679; *to repay sums pd by lessor for insce*, p. 685, "the sd messe & outbldgs & the fixtures & fittgs specified in the schdle hto, & all other fixtures & fittgs, includg trade fixtures & fittgs, wch may at any time durg the sd term be placed or be in or upon the demised premes agst loss or damage by fire & for insurg the plate-glass windows & mirrors of & in the sd premes agst loss or damage by accident, every such sum to be so repd on demand immedly after the expenditure thof." *Not to do anything to avoid policy agst fire or accident*, p. 687, *form xxvi., mutatis mutandis; to paint outside, saying*, "wood & iron work includg all sign-boards," p. 680; *to repair*, p. 681, *saying*, "fixtures & fittgs specified in the schdle hto, & any other fixtures & fittgs wch may be placed in or upon the sd premes durg the continue of the sd term includg trade fixtures & fittgs & all sign or other boards & placards relatg to the business of a licensed victualler as carried on by the lessee, or to the business of a brewer as carried on by the lessors": AND ALSO will from time to time & at all times durg the sd term forthwith replace & reinstate any of the sd fixtures & fittgs & sign or other boards & placards wch shl become worn out, broken, damaged, destroyed, or lost, by new articles of the same kind & quality: PROVD ALWAYS that this covt shl not oblige the lessee to replace any plate-glass windows or mirrors wch shl be broken by accident within the meaning of any policy of assurce agst loss or damage by accident effected by the lessors psuant to their covt in that behalf hinafter contd; *to deliver up in good repair*, p. 684, *saying*, "the sd fixtures & fittgs, & all sign & other

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—
To repay
sums paid
for insur-
ing.

To repair.

To replace
fittings,
&c.

wch may at any time become owg by the lessee to the lessors for rent or for goods supplied, or for damages or orwise howsr, & also as a secy for the due pformce of the lessee's covts in other respts the sum of £——, wch sum shl remain so deposited until the end of the tenancy, but shl not carry intt in favour of the lessee, & the lessors shl be entled to retain the sd deposit intact until the end of the tenancy, & shl not be bound to apply the same or any pt thof in paymt or dischge of any moys owg from the lessee, but shl be at full liberty to pursue & enforce any other remedies available for the recovery of any such moys."

PREC. XVII. boards & placards"; to permit lessor to enter & view & to repair on notice, p. 684; power to lessor to repair on default of lessee, p. 685; power to lessor to enter & take inventories of fixtures, p. 685, saying, "fixtures & fittgs, sign & other boards & placards"; not to make alterons, p. 688; not to assn or underlet, p. 691; & will not durg the sd term give any bill of sale or preferential secy on his goods or effects witht the written consent of the lessors; AND ALSO will at all times durg the sd term reside upon the demised premes & psonally carry on the business of a licensed victualler thron so long as the necy licences can be procured: AND ALSO that the lessee will apply for & use his best endeavours to obtain the necy licences or renewal of licences for openg & keepg open the sd premes durg the sd tenancy as a tavern & public-house duly licensed for the sale & consumption thrin of ale, beer, wine & spirits by retail, & will pay the excise duties for the sd licences: AND ALSO that the lessee will keep open the sd premes for the sale of the articles afsd at all times durg the greatest number of days & greatest number of hours that shl be allowed by law, & use his best endeavours to increase & extend the custom & business of the sd house: AND WILL at all times manage & conduct the business thof in a lful, orderly, & pper mner: AND WILL not permit any gamg, riotg, or other disorderly practices thrin or do or suffer anything whby the sd licences or any of them may be or become liable to be forfeited or suspended, or the renewal thof withheld, or whby the sd trade or business or the goodwill thof may in any way be or be liable to be prejudicially affected, or break the laws for the time being in force affectg publicans or licensed victuallers, either by an act of commission or omission, it being expressly agrd that any conviction of the lessee (whether endorsed on the licence or not) (b) for any offence agst the Licensing Acts, 1872 to 1874, or any statutes for the time being in force regulatg the trade of licensed victuallers, or any notice or complaint given or made by any justice of the peace or by the superintendent or

Not to give bill of sale.

To reside.

Covenants by lessee to obtain licences.

To keep house open.

Conduct business properly.

Nor do acts to forfeit licences (a).

(a) See form of covenant for payment of sum as liquidated damages on conviction for any offence against the licensing Acts, 39 Sol. J. 485.

(b) See *Wooler v. Knott*, 1 Ex. D. 124, 265; *Fleetwood v. Hull*, 23 Q. B. D. 39. A covenant to insure the excise licences with a company doing that class of business might be added.

*2nd ed. with atty to acts
of underlessee of premises
in London 1878 125 716*

actg superintendent for the time being of any police force or the inhabitants of the sd parish as to the conduct or management of the sd house & premes, shl be conclusive evidece of a breach of this psnt covt: AND ALSO that the lessee will use the sd premes durg the sd tenancy as a tavern or licensed victuallg house only, & for no other ppose, so long as the necy licences can be obtd: AND WILL not do or suffer to be done upon the sd premes anything wch may be or grow to the damage or annoyce of the lessors [& will not brew or permit to be brewed upon or about the sd premes, any beer, ale, porter, or other malt liquors]: AND ALSO that the lessee will deal exclusively with the lessors or their succors in business [or nominees] for all porter, &c., *as above*, wch shl be sold or consumed upon the sd premes or shl be brought thron to be so sold or consumed: AND WILL not on any pretence whatsr pchase, take in, or rece, or have in his posson, or directly or indirectly sell or dispose of or permit the sale, disposal, or consumption in or upon the sd premes of any such articles other than such as shl have been pchased or taken of the lessors, or their succors in business [or nominees], provd they shl be willing to supply the same to the lessee at the fair market price (c), & the fact of any barrel other than such as are supplied by the lessors being upon the sd demised premes (whether empty or not) shl be conclusive evidece of a breach of this covt: AND FURTHER that the lessors shl be entled to a chge on the intt of the tenant in the sd demised premes & the tenant's fixtures (if any) now or for the time being thrin (but excludg psonal chattels within the meang of the Bills of Sale Acts, 1878 & 1882) for the amt from time to time owing from the lessee to the lessors for goods supplied: AND ALSO that the lessee will permit the lessors, or any pson appted by them, at any time to enter & inspect all cellars, vaults, or stores belongg to or in the occupon of the lessee (wheresr situate), & the stock of ale,

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Use premises only as public-house.

Not cause annoyance.

Not to brew.

Deal with lessors only.

Lessors to have charge for goods supplied (d).

Permit lessors to enter and view and to examine accounts.

(c) See *Luker v. Dennis*, 7 Ch. D. 227; *Edwick v. Hawkes*, 18 Ch. D. 199.

(d) See p. 744, note. As to fixtures, see the Bills of Sale Act, 1878, s. 4 (2), and s. 7. This charge, though equitable only, being by deed, will carry with it the remedies conferred by the Conv. Act, 1881, s. 19; see definition of "mortgage" in s. 2. The clause subjects the deed to a mortgage stamp in addition to the lease stamp; but at the rate of 1s. per cent. only under the Stamp Act, 1891, sched. "Mortgage"; and see s. 88 (2) as to mortgages for unascertained amounts.

As to charge for goods supplied.

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To pay
monthly.(On expira-
tion of
term to
transfer
licences.Make ap-
plications
for re-
newal of
licences.Power for
lessors to
apply for
renewal of
licences.Power for
lessors to
alter signs.As to
power of
Court to
relieve

beer, porter, or malt [or spirituous] liquors in the same, & also to inspect & examine the books & accts of the business carried on by the lessee upon the sd premes: AND WILL pay & settle with the lessors or their succors in business for all articles & things supplied by them to the lessee once in every calr month or oftener if required durg the sd term: AND ALSO will at the expiron or sooner determinon of the sd term deliver up to the lessors, or their nominees or nominee, & do all necy acts for transferrg to them or him the then existg licences (magisterial & excise), on being pd the fair proportion for the unexpired term thof: AND THAT such licences if not so delivered & transferred shl be considered as lost or wilfully withheld by the holder thof so that the magistrates may rece a copy thof under the 41st section of the Licensing Act, 1872 (a): AND WILL also sign any notices, & make any applicons for the transfer or renewal of the licences wch the lessors may require: AND WILL at his own expse attend, if required, bfe the justices in pson, & consent to any such transfer or renewal: AND THAT it shl be lful for the lessors or any pson appted by them in that behalf, & they, or he, are, or is hby irrevocably empowered to apply for & sign, give, & do in the name & as the agents or agent of the lessee, all notices & acts necy for obtaing such transfer or renewal as afsd as the case may be, & on the hearg of any such applicon the prodon of these psnts shl be conclu- sive evidce agst the lessee of his consent to such transfer or renewal being made, & he shl not be at liberty then or thrafter to oppose or question such transfer or grt (b): AND ALSO that the lessors may at any time remove any sign or cther boards & placards affixed to the sd premes, whether externally or in- ternally, & may at any time affix thto such sign or other boards & placards with such inscriptions thron as they may think fit, & that the lessee will not remove, efface, alter, or intermeddle with the same, or affix any other sign or other boards or placards to the sd premes: *Proro for re-entry in case of non-paymt of rent, or breach of cort, or bkptcy, &c.* (c),

(a) See the Licensing (Evidence) Act, 1884.

(b) See *Garrett v. Justices of Middlesex*, 12 Q. B. D. 620.

(c) The power given to the Court by s. 14 of the Conv. Act, 1881, to relieve against forfeiture of a lease for breach of covenant, &c., is, by sub-a. (6), not to extend to a covenant or condition against assignment, &c., or to a

“or if the lessee shl be convicted of any offence agst any of the laws affectg publicans or licensed victuallers,” p. 698 (d). PREC. XVII.
Covt by lessors for quiet enjoymt, p. 695; to insure, “the sd demised messe & premes includg the fixtures & fittgs specified in the scdle hto, & any other fixtures & fittgs wch may at any time durg the sd term be affixed to the demised premes with the consent of the lessors, includg trade fixtures & fittgs,” *agst fire*, “& the plate-glass windows & mirrors agst loss or damage by accident,” p. 686, *mutatis mutandis*; & that the lessors will durg the sd term supply the lessee with such beer, ale, porter, & other malt liquors as he may require, but not after the lessee shl have contracted a debt to them for goods supplied to the amt of £—— until such debt shl be fully pd & satisfied. Covenants by lessors.
 IN WITS, &c. To insure.
To supply beer.

[*Schdle of Fixtures, &c.*]

The Schdle above reld to.

condition for forfeiture on bankruptcy or taking in execution; and the provision in the Conv. Act, 1892, 55 & 56 Vict. c. 13, s. 2, sub-s. (2), by which sub-s. 6 of the former Act is qualified does not apply to public houses or beershops, see sub-s. (3) (c). against forfeiture of lease.

(d) As to the omission of the power to effect a forcible entry, which is frequently found in such leases, see above, p. 699, note. Having regard to the risk of a renewal of the licences being refused merely because the authorities wish to diminish the number of public houses, it may be proper in the interest of the tenant to insert “PROVD also that if at any time the renewal of the sd licences or any of them shl be refused for any cause other than the act, default, or misconduct of the lessee or of any other pson in occupon of the demised premes, & the lessee shl be desirous,” &c., *continue power to lessee to determine lease*, p. 701.

XVIII.

PREC. XVIII.

LEASE, *with the CONCURRENCE of several distinct sets of MORTGAGEES, of FREEHOLDS, used as a BREWERY, and of FREEHOLD and LEASEHOLD PUBLIC-HOUSES. A RECEIVER of the Rents being appointed on behalf of the Mortgagees. PROVISIONS for keeping up VALUE of BREWERY PLANT (a).*

<p>Recitals. Title of lessor.</p>	<p><i>PARTIES, the sevl sets of mtgees of the first four parts ; A. (hinafter called the lessor, wch expression, &c., see p. 670), 5 ; B. & C. (hinafter called the lessees, wch expression, &c.), 6 ; D., recer, 7 : WHAS the lessor is entled to the freehd hds descd in the first schdle hto for an este in fee simple, & to the leasehd hds descd in the sd first schdle for the respive residues of the sevl terms expirg at the dates thrin mentd, subjt as regards the sd hds to the mtges or chges descd in the second schdle hto [some of wch affect the whole & other pts only of the sd hds] ; & the sd mtge debts are now resply vested in the sevl psons whose names are written in the second column of the sd second schdle opposite the description of instrumt by wch each such mtge or chge was affected, wch last-mentd psons are the same psons as the pties hto of the first four pts & are hinafter collectively refd to as the mtgees (wch expression shl, where the context so admits, include their respive hrs, exs, ads, & assns) ; AND WHAS the hds descd in the first pt of the sd first schdle are now used as a brewery, known as the — Brewery, & are hinafter refd to as the brewery, & the hds descd in the second pt of such first schdle are public-houses, pchased or taken on lease by the lessor, & the same are hinafter refd to as the public-houses : AND WHAS the lessor is also entled to the coppers, boilers, engines, machy, plant, & effects, now affixed to the soil of the brewery, subjt so far as the same are included thrin to the sd mtges & chges [or some of them] : AND WHAS the lessor has agrd to grt the lease hby effected to the lessees, & the mtgees have agrd to join in these psnts for the pposes & in the mner hinafter appearg : NOW THIS</i></p>
<p>Premises used as brewery and public- houses.</p>	
<p>Title of lessor to plant.</p>	
<p>Agreement for lease.</p>	
<p>Wit- nesseth.</p>	

(a) For other forms of leases by mortgagor and mortgagee, see the next Precedent and LEASES MISCELLANEOUS.

INDRE, &c., *conson*, they, the mtgees, [so far as relates to the hds & premes comprd in their sevl secs], at the reqt (hby testified) of the lessor, do & each & every of them doth hby demise, & the lessor doth hby demise & confirm unto the lessees, ALL & SINGR the sd freehd & leasehd hds & premes descd in the first schdle hto, togr with the use of ALL & SINGR the coppers, boilers, engines, machy, plant, & effects, now fixed to the soil of the brewery, to HOLD all such pts of the sd premes as are of freehd tenure, & such of the sd coppers, boilers, engines, machy, plant & effects, as are affixed thto, & all such pts of the sd premes as consist of leasehds held for terms of yrs of wch the respive unexpired residues exceed twenty-one yrs, UNTO the lessees, for the term of twenty-one yrs from the day next bfe the day of the date of these pants, but subjt as to the sd leasehd premes to the rents & covts affectg the same resply: AND TO HOLD all such pts of the sd premes as consist of leasehds held for terms of yrs of wch the respive unexpired residues do not exceed twenty-one yrs, UNTO the lessees, for the unexpired residues of the sevl terms for wch the same are now resply held, except the last day of each such term, subjt to the rents & covts affectg the sd last-mentd leasehd premes: *Reservon of rent genlly* (b), p. 676. *Covts by lessees*, "with the mtgees & each of them, & also septely with the lessor, & also septely with the sd D., as such recer of rents as hinafter mentd, or other the recer or recers for the time being to be appted as hinafter mentd," *to pay rent*, p. 679; *to pay rates & taxes*, p. 679; *to keep in repair*, "the messes, bldgs, & erons hby demised, & any new bldgs & erons wch may be placed on the sd premes durg the continue of this demise, & also all & singr the coppers, boilers, engines, machy, plant, & effects now or wch may at any time durg this demise be affixed to the brewery, so that such coppers & other things as last afsd may at all times be eql in value to the sum of £—— at the least," p. 681: *to deliver up at end of tenancy in good repair*, "unto the pson or psons then entled to the immediate revon of the sd respive demised premes," p. 684: AND ALSO will

PREC. XVIII.

Demise.

Parcels.

Habendum as to freeholds, and leaseholds held for more than twenty-one years.

To lessees for twenty-one years.

Habendum as to leaseholds held for less than twenty-one years.

To lessees for residue of terms less the last day.

Covenants by lessees (c).

To keep in repair.

Perform covenants in head leases.

(b) If the mortgages affect different parts of the hereditaments, the hereditaments affected by each mortgage should be placed in a separate schedule and a separate rent reserved in respect of the hereditaments in each schedule.

(c) See another form in the next Precedent.

PREC. XVIII.	from time to time, & at all times durg this demise, pay, pform, & observe all & singr the rents & covts on the pt of the sevl lessees, & condons reserved by & contd in the sevl indres of lease, under wch the sd leasehd premes are held ; AND WILL keep the mtgees, & the lessor, & every of them, indemnified agst all actions, pcdgs, costs, chges, claims, & demands whatsr, by reason or on acct of the non-paymt, non-observe, or non-pformce of the same rents, covts & condons, or any of them ; <i>to permit, " the mtgees & the lessor, & every of them, & the sd D. as such recer as hinafter mentd, or other the recer or recers for the time being to be appted as hinafter is mentd," to enter & view the premes, & to repair on notice, p. 684 ; with power to the mtgees or lessor to repair on default of lessees, p. 685 ; to insure & rebuild in case of fire, p. 686. AND ALSO will at all times durg this demise carry on the business of brewers on the brewery : AND FURTHER that the lessees will not at any time convert or suffer to be converted the public-houses or beer-houses hby demised, or any of them, or any pt thof resply, into shops or warehouses, or open or use the same, or suffer the same to be opened or used, for any other ppose than as an hotel, inn, public-house, tavern, or beer-house, witht the consent in writg of the lessor, & also will use their best endeavours in order that the sd public-houses & beer-houses may at all times be kept & conducted in a regular & pper mner in every respt : AND THAT the lessees will not do or omit any act, & will use their best endeavours to prevent any act being done or omitted whby the licences for the vendg of [wines, spirituous liquors,] ale & beer in the sd public-houses or beer-houses may become forfeited, or the renewal thof refused : AND ALSO will at all times use their best endeavours to cause the business of the sd sevl public-houses & beer-houses to be managed or conducted under the sevl names or signs whby the same are now resply known : AND WILL, upon the determinon of this demise (if required), use their best endeavours to procure that the sd sevl licences grted durg the then current yr for the vendg of any [wines, spirituous liquors,] ale, or beer in the sd demised public-houses or beer-houses, may be assned for the unexpired terms thof to the pson or psons then entled, &c., as above, or as he or they shl direct ; Provo that the lessees may, from time to time durg the continue of this demise, for the</i>
And indemnify lessor against such covenants.	
Carry on business.	
Use public houses for no other purpose.	
Not to forfeit licences.	
Carry on public-houses under present signs.	
On determination of term transfer licences.	
Power to lessees to alter plant.	

ppose of improvng the brewery, vary, alter, or exchange all or
 any pt of the coppers, boilers, engines, machy, plant, & effects,
 wch now are or may hrafter be affixed to the brewery, provd
 that every such copper, &c., wch may at any time be varied,
 &c., as afsd, be forthwith replaced or improved, so & in such
 mner that the coppers, &c., for the time being affixed to the
 brewery may be kept & maintained in good & efficient condon
 for the pper workg & carryg on of the brewery business, & eql
 in value to the sum of £—— at the least. *Powers of re-entry*
& distress grted to mtgees, lessor, & recer, pp. 698, 701 : AND
 EACH of them, the mtgees & lessor, so far only as relates to his
 own acts & deeds & the acts & deeds of all psons claimg under
 him, doth hby for himself, &c., *continue covt for quiet enjoymt*,
 p. 695, *saying*, “witht any lful interruption or disturbce from
 or by the mtgees & lessor or any of them, or any pson or
 psons claimg or to claim under or in trust for them, him, or
 any of them.” *Apptmt by mtgees & lessor of D. as recer, see*
MTGES, the mtgees covtg to concur in the apptmt of a new recer if
necy : AND IT IS HBY AGRD & decld betn the lessor & lessees that
 the lessor shl, within two calr months from the determinon of
 this lease, whether the same shl determine by effluxion of
 time or orwise, pchase all public-houses of any tenure wch
 may have been pchased or taken on lease by the lessees for the
 pposes of the brewery at a fair valuon : PROV D THAT nothing
 hrin contd shl prevent the lessees, at any time prior to the
 determinon of this lease, from demisg at rack-rent any of the
 sd public-houses, & such pchase as afsd to be made by the
 lessor shl be subjt to every such lease : PROV D ALSO that
 nothg hrin contd shl prevent the lessees from sellg any of the
 sd pchased public-houses at any time bfe this lease shl have
 determined by re-entry, or bfe the —— day of ——, *i.e.*, a yr
bfe the end of term, wchever shl first happen ; *Agrmt betn the*
lessor & lessees, that immedly after the determinon of the term
 hby grted, whether the same shl happen by effluxion of time
 or orwise, a valuon shl be made of all new bldgs & improvemts
 to bldgs erected or made by the lessees, & of all coppers, &c.,
 on the brewery, & in case the amt of such valuon shl exceed
 the sum of £——, then the amt of such excess shl be immedly
 pd by the lessor to the lessees, but if such amt shl be less
 than the sum of £——, then the amt of such deficiency shl be

PRINC. XVIII.

Covenant
for quiet
enjoyment.On deter-
mination
lessor to
purchase
public-
houses
bought by
lessees.Power for
lessees to
demise
purchased
public-
houses.Power to
lessees to
sell such
houses.Provision
for lessor
taking over
plant on
determi-
nation or
term.

PREC. XVIII. immediately pd by the lessees to the pson or psons entled, &c.,
 — as above. IN WITS, &c.

[Two Schdles.]

XIX.

PREC. XIX.
 —

LEASE of a MILL and fixed and moveable MACHINERY with the CONCURRENCE of MORTGAGEES of PART of the Property.

Recital of
 lessors'
 title.

Wit-
 nesseth.
 Demise.

Parcels.

PARTIES, A. & B. (hinafter called the mtgees, wch expression shl, where the context so admits, include their hrs, exs, ads, & assns), 1 ; C. (hinafter called the lessor, wch expression shl, &c., include his hrs, exs, ads, & assns), 2 ; D., E. & F. (hinafter called the lessees, wch expression shl, &c.), 3 ; *WHAS* the lessor being seised in fee simple in posson of the mill, machy, & effects first & secondly hinafter desc'd, subj't to a mtge thof in fee simple to the mtgees, & being the owner of the machy & effects thirdly hinafter desc'd, has agr'd to grt a lease thof to the lessees for the term & in mner hinafter mentd, & the mtgees have agr'd, at the req't of the lessor, to join in mner hinafter appearg in the demise of the sd premes first & secondly hinafter desc'd : *NOW THIS INDRE*, &c., *demise by mtgees*, "so far as regards the premes first & secondly hinafter desc'd at the req't of the lessor," & *by lessor as regards*, "all the premes hinafter desc'd," of, First : *ALL THAT* mill called — Mill, situate, &c., with the warehouse, boiler-house, & engine-house, chimney, & reservoir, belongg or contiguous thto, in the occupon of —, *referce to map* : *TOGR WITH* the water & other privileges & appurts belongg to the sd premes : Secondly, *ALL & SINGR* the engine, boiler, shaftg, upright & horizontal main gearg, & other the machy & effects annexed to the soil & freehd of the sd mill & premes, the parlars whof are specified in the first schdle hrunder written : & Thirdly, *ALL & SINGR* the steam or power looms, windg machine, warpg mills, beamg frames, & other the machy & effects wch are not affixed to the soil & freehd of the sd mill & premes, the

parlars whof are specified in the second schdle hto, *habendum*, to the lessees, from — for the term of — yrs determinable nevs as hinafter mentd, p. 676; PAYG yrly durg the sd term hby grted, & so in proportion for any less time than a yr, to the mtgees, for & in respt of the sd premes first & secondly hinbfe demised, the rent of £—: AND PAYG to the lessor for & in respt of the sd premes thirdly hinbfe demised, the rent of £—, &c., the sd sevl rents of £— & £—, to be pd, &c., p. 676; *Covts by lessees*, “with the mtgees, & also separately with the lessor,” *to pay*, “unto the mtgees, & unto the lessor, the sd sevl yrly rents,” p. 679; *to pay rates & taxes*, p. 679; *to repair*, “except the roofs, outer walls, & ppal timbers of the demised premes, & save & except in the case of fire, storm, or tempest affectg the premes first & secondly hinbfe demised,” (b) p. 681; *special covts as to paintg*; *to deliver up at end of tenancy in good repair*, “unto the mtgees & the lessor resp’y,” p. 684; *to permit* “the mtgees as regards the sd premes first & secondly hinbfe demised, & the lessor as regards the sd premes thirdly hinbfe demised,” *to enter & view & repair on notice*, p. 684; *to permit* “the mtgees as regards, &c., & the lessor as regards, &c.,” *as above, to repair on default of lessee*, p. 685; *to insure premes thirdly demised*, p. 686; AND WILL at all times keep on the sd premes stock of double the value of one yr’s rent: AND THAT, fourteen days bfe the expiron or other sooner determinon of the term hby grted, a pper estimate or valuon shl be made as betn the mtgees & the lessees, of the sum or sums required to put the sd premes first & secondly hinbfe demised into such good repair, order, & condon as they ought to be left in accdg to the covts hinbfe contd: AND THAT the lessees will forthwith pay to the mtgees the amt of such estimate or valuon wch shl be recoverable as liquidated damages; *Similar covts by lessees with lessor as to valuon of the* “premes thirdly hinbfe demised,” & *paymt of valuon*; *Power to lessees to determine lease at end of first — yrs on givg six*

PREC. XIX.

Reserva-
tion of
separate
rents of
property in
and not in
mortgage
(a).

Covenants
by lessees.

To keep
stock.

Valuation
of dilapi-
dations to
be made
fourteen
days before
the expira-
tion of the
term.

To pay
sums
awarded.

(a) If the plant, &c., be of small value, it may be better to reserve a peppercorn in respect of it, and to throw the whole rent on the land and fixtures.

(b) Another form is, to repair “all the internal pts of the sd premes except the floors & main & other shaftg, gearg, & fixtures belongg to the lessors, damage by fire excepted.”

PREC. XIX.	<i>months' notice to mtgees as to first & secondly demised premes, & to lessor as to thirdly demised premes, p. 701: PROVID ALWAYS that, until the mtgees shl require paymt of the sd rent of £——, the rent reserved to the mtgees, to them, & give to the lessees, or leave at the countg-house on the demised premes, a notice in writg requirg such paymt, the sd rent of £—— shl be pd to the lessor, & his rect shl be a sufft dischge for the same, & he may give any notice & appt any valuer hby authorised to be given or appted by the mtgees; Provo that on non-paymt of, "the sd yrly rents of £—— & £——, or any pt thof resply," or on breach of cort, or on the bkptcy, &c. &c., of the lessees "eir their mtgees or the lessor, as regards the premes first & secondly hinfte demised, & the lessor as regards the premes thirdly hinfte demised, or any pson or psons duly authorised by them or him resply, may re-enter," &c., p. 698; Cort by lessor with lessees to repair, "the roofs, outer walls, & ppal timbers of the demised premes," p. 694; to insure, "the premes first & secondly hinfte demised," p. 695: AND WILL at the end or other sooner determinon of the sd term take & pchase from the lessees all the workg stk upon the sd demised premes at a valuon as workg stk: Power to lessor to pchase machy, p. 703: Provo for cesser of rent on destron by fire, "or tempest," p. 700: Arbitron, p. 704: AND EACH of them the mtgees & lessor so far as relates to his own acts & deeds & the acts & deeds of psons claiming through or under him, the mtgees covtg only as regards the sd premes first & secondly hinfte demised, & the lessor covtg as regards all the demised premes, doth hby, &c., cort for quiet enjoymt witht interruption by, "the mtgees & lessor or any of them, or any pson," &c., p. 695. IN WRITS, &c.</i>
Until notice given by mortgagees rents to be paid to lessor (a).	
Power of re-entry.	
Covenants by lessor	
To purchase working stock at determination of lease.	
Covenant for quiet enjoyment.	

[*The Schdles.*]

(a) See the Judicature Act, 1873, s. 25 (5).

XX.

LEASE of Rooms in a FACTORY, with the use of STEAM POWER.

PREC. XX.
—

PARTIES, A. & B. (hinafter called the lessors, wch expression, &c., see p. 670, note), 1; C. (hinafter called the lessee, wch expression, &c.), 2. *WITNETH, demise by lessors to lessee of*, ALL THAT room, being & constitutg the ground floor or lowest story of & in a mill or bldg, situate, &c.: And also ALL THOSE three rooms constitutg the first, second, & third storeys of & in a bldg, &c.: AND ALSO steam power for the pper & effectual turng & workg of power looms & other machy eql to such an amt of horse power, not exceedg in the whole 15-horse power, as the lessee may from time to time require: AND ALSO steam sufft for heatg the sd rooms hby demised [& for the preparon of the yarn previous to its being woven]: WITH free liberty for the lessee & his servants & workmen at all seasonable times to use the staircase of the sd mill in common with the lessors & their tenants, servants, & workmen, *habendum*, p. 676: PAYG therefor yrly durg the sd term hby grted, & so in proportion for any period less than a yr, the rents follg, that is to say, the yrly rent of £——, AND ALSO for each qtr of a yr endg on one of the usual qtr days, durg wch the lessee shl at any time use more than 12-horse power & less than 14-horse power, the addonal rent of £—— for each horse-power or fraction of horse-power exceedg 12-horse power, AND FOR each qtr of a yr endg as afsd, durg wch the lessee shl at any time use 14-horse power & upwards, the addonal rent of £——, [& also for each qtr of a yr endg as afsd durg wch the price of coal delivered at —— afsd shl exceed 10s. per ton, an addonal rent calculated at the rate of —— p.c. on the sd fixed rent hby reserved for every complete 1s. on the cost per ton of coal in excess of 10s. per ton], the sd fixed rent of £—— p.a. to be payable in advce (b) by eql qtrly paymts, &c., & the paymt of the addonal rents, if any, accrug in each qtr to be made at the qtr-day endg such qtr, & all such fixed & addonal rents to be pd witht any dedon, except for landlord's ppty tax; *Covts by*

Wit-
nesseth.
Parcels.Reserva-
tion of
rents.Extra rent
according
to price of
coal.Covenants
by lessee.

(b) In leases of this nature the rent is generally made payable in advance.

PREC. XX.

Proviso
for cesser
of rent on
deficiency
of steam
power (a).

Covenant
by lessors
to provide
steam
power for
working
looms.

Keep main
shaft going
— rev-
olutions per
minute.

Provision
for stop-
page of
machinery.

lessee to pay rents, p. 679; *to keep in repair*, "the internal pts of the sd demised rooms & premes, damage by natural decay, fire, or tempest alone excepted," p. 681; *to deliver up in repair*, p. 684; *to permit lessors to enter & view premes & to repair on notice*, p. 684; *to permit lessors to repair on default of lessee*, p. 685. *Power of re-entry*, p. 698. *Provo for cesser of rents on destron by fire*, p. 700: PROVD also that if at any time durg the continue of the sd term hby grted, steam power shl not be duly supplied to the lessee accdg to the covt in that behalf hinafter contd, owing to the steam-engine or main shaftg requirg repair, then & durg that time a proportionate pt of the addonal rents orwise becomg payable durg the qtr shl be remitted. *Covt by lessors to pay taxes*, p. 694: AND FURTHER, that the lessors will at all times, except on Sundays, Christmas Day, Good Friday, Bank Holidays, & any other day wch may be observed as a genl holiday, durg the continue of the sd term from six o'clock in the morning until six o'clock in the evening, or as many hours per day as shl from time to time be allowed by law for workg in factories, but on Saturdays until one o'clock only, [unless prevented by strikes (b) & combons of workmen, or by a lockout made with the concurrence of the associon of, &c.] at their own expse, provide & maintain steam power not exceedg 15-horse power, sufft for the pper & effectual turng & workg such power looms & other machy as the lessee shl affix or set up in or upon the sd premes hby demised or any pt thof: [AND ALSO will at all such times as afsd keep the main shaft in the lower room of the sd mill to ——— revolutions

(a) The following is another form:—

"PROVD that the lessors shl not be held liable in damages for or in consequence of any stoppage of the machy belongg to the lessee occasd by any defect in or accident to the boilers, steam-engines, main shaftg, or other apparatus belongg to the lessors, nor shl any cession or diminon in the sd rent be allowed or claimed in consequence of any such defect or accident unless such stoppage shl take place for more than seven days in any one yr, in wch case a dedon shl take place in the sd rent proportionate to the excess of such stoppage over seven days in any one yr, wch dedon shl be taken to be in full of all claims for damages by the lessee agst the lessors."

(b) As to strikes, see *Stevens v. Harris*, 56 L. J. Q. B. 516.

per minute, the no. of such revolons being ascertained in the usual mner by a timepiece to be placed in a conspicuous pt of the premes, & to be provd, fixed, & regulated at the expse of the lessee:] AND ALSO will durg the sd term provide steam sufft for heatg the sd rooms hby demised, & for the preparon of the yarn previous to its being woven, & for producng artificial humidity of the atmosphere psuant to the Cotton Cloth Factories Act, 1889 (c): AND ALSO will durg the sd term keep the main mill gearg in the lower room of the sd mill, & the main upright shaftg in the sd three rooms of the sd bldg, in good & sufft repair & workg order, & to keep in repair, "the outside walls, floors, & roofs hby demised & the sd staircase hinbfe mentd," p. 694, *slightly altered, for quiet enjoymt*, p. 695. *Arbitron clause*, p. 704. IN WITS, &c.

PREC. XX.

Provide
steam to
heat rooms
and yarn.Keep
gearing
in repair.

(c) 52 & 53 Vict. c. 62.

LEASES (AGRICULTURAL) (a).

RESERVATIONS (b).

Reserva-
tion of
timber (c).

I. EXCEPT & RESERVE unto the lessor all timber, timber-like trees, tellers & saplings likely to become timber [& the bodies of all pollards, & the tops & lops of all such trees as have never been topped or lopped as pollards], now standg or growg, or wch durg the term hby grted may be standg or growg, upon the sd demised premes, or any pt thof [with free liberty of ingress, egress, & regress, way, & passage for the lessor, his

As to agri-
cultural
leases.

(a) See the Agricultural Holdings (England) Act, 1883 (46 & 47 Vict. c. 61), and note thereon, *infra*, p. 772; as to small holdings (cottage gardens and allotments), 50 & 51 Vict. cc. 26 and 48; and see *Cooper v. Pearce*, W. N. 1896, p. 40; and as to market gardens, the Market Gardeners Compensation Act, 1895 (58 & 59 Vict. c. 27); and as to land in mortgage, the Tenants Compensation Act, 1890 (53 & 54 Vict. c. 57); and as to the acquisition by county councils of land, and adaptation and disposal thereof for small holdings (exceeding one acre but not exceeding fifty acres, or if exceeding fifty acres of an annual value for income-tax purposes not exceeding £50), see the Small Holdings Act, 1892 (55 & 56 Vict. c. 31). In preparing leases or agreements for yearly tenancies of farms, the following points must be attended to:—*First*. Is the tenant to be bound to use any special rotation of crops, and, in particular, is he to be bound to do so in the last year, or last two years of the term? *Second*. Is he to treat the meadow-land in any particular manner? *Third*. If there are underwoods, is he to be restricted as to cutting them? *Fourth*. Whether it is desirable to fix by the lease, or to leave to subsequent agreement or arbitration, the terms of compensation payable for unexhausted improvements under the Agricultural Holdings (England) Act, 1883; or to insert compensation provisions into the lease in substitution for those in the Act; see note, *infra*, p. 773. As to whether the Agricultural Holdings Act, 1883, applies to tenancies for one year certain, see 36 Sol. J. 358, 365.

Under 14 & 15 Vict. c. 25, s. 1, an agricultural lease by a tenant for life, though invalid against those entitled in remainder, is good for one year after the lessor's death. See further as to leases by limited owners, *ante*, p. 705.

(b) See also p. 674 *et seq.*

(c) For distinction between "timber" and "underwood," see Dart, p. 148.

agents, servants, & workmen, at all reasble times to view, grub up, fell & cut down, & with horses, cattle, & carts, & orwise, to take & carry away the sd timber & other trees [& pollards], & the tops & lops thof, & for such pposes to make & erect all necy sheds & sawpits & other convenices on the sd demised premes, doing no wilful spoil or damage to the corn, grass, hay, or other crops of the lessee, & payg to him a fair compenson for all damage actually done, the amt thof in case of dispute to be settled by arbitron].

II. EXCEPT & RESERVG unto the lessor all [coal, ironstone, ores, quarries, stone, brick-earth, sand, gravel, & other] mines & minls in, under, or upon the sd premes or any pt thof [with free liberty of ingress, egress, & regress, way & passage for the lessor, his agents, servants, & workmen to dig, search for, get, dress, make merchantable, & carry away the sd [coal, &c., *as above*, & other] mines & minls, & for the sevl pposes afsd to sink such pits & shafts, & to make & erect such engines, machy, bldgs, erons, works, & convenices, on the sd demised premes as may be requisite or convenient, doing no wilful spoil, &c., *as in last form*.]

Reserva-
tion of
minerals
(d).

III. EXCEPT & RESERVG to the lessor all timber & other trees, & all mines & minls, with free access to cut, work, & carry away the same resply.

Reserva-
tion of
timber and
minerals.

IV. EXCEPT & RESERVG to the lessor, subjt to the provons of the Ground Game Act, 1880 (*f*), all game [woodcocks, snipes, quails, landrails (*g*)], wild fowl, rabbits, & fish, with the exclusive rt for him, & all psons authorised by him, at all times, of preservg the same, & of huntg, shootg, fishg, coursg, & sportg, over & on the sd demised premes.

Short
form.

Reserva-
tion of
sporting
(e).
Full form.

(d) As to the meaning of "mines" and "minerals," see *Heat v. Gill*, 7 Ch. 699; *Tucker v. Linger*, 8 App. Cas. 508; *Bell v. Wilson*, 1 Ch. 303; *Att.-Gen. for Isle of Man v. Mylchreest*, 4 App. Cas. 294; *Midland Ry. Co. v. Haunchwood Brick and Tile Co.*, 20 Ch. D. 552; *Lord Provost of Glasgow v. Farie*, 13 App. Cas. 657; *Earl of Jersey v. Neath Union*, 22 Q. B. D. 555; *Midland Ry. Co. v. Robinson*, 15 App. Cas. 19; *Elph. N. & C. Interp. Deeds*, p. 603.

Meaning of
"mines"
and
"mine-
rals."

(e) As to the lessor's liability for injury to crops from overstocking with game, see *Farrer v. Nelson*, 15 Q. B. D. 258.

(f) 43 & 44 Vict. c. 47.

(g) The birds included in the brackets are not game, see the Game Act (1 & 2 Will. IV. c. 32), s. 3, but are within the Game Licence Act (23 & Vict. c. 90).

The same.
Short
form.

v. RESERVE to the lessor, subjt to the provons of the Ground Game Act, 1880, the exclusive rt to all game & rabbits, & to preserve the same on the premes, with liberty to shoot, fish, hunt, course, & sport thron.

REDDENDUM (a).

Penal
rents for
meadow
land
broken
up (b).

I. AND ALSO PAYG in like mner the further yrly rent of £—— for every acre of meadow-land, & so in proportion for any less quantity than an acre, wch shl at any time be ploughed, broken up, sown, or converted into tillage, witht the consent in writg of the lessor, or his agent, such addonal rent to commce from the happeng of the event on wch the same is to arise, & to be payable on the qtrly days afsd durg the then residue of the term hby grted.

Do. for
improper
cultivation.

II. AND AN addonal rent of £—— for every acre, & so in proportion for any less quantity than an acre, of arable land wch shl at any time be cultivated orwise than accdg to the covts hinafter contd witht the consent in writg of the lessor, or his agent, such addonal rent, &c., *as in last form*.

Do. for
improve-
ments not
notified by
lessee (c).

III. AND A further yrly rent of £—— for every acre of land on wch improvemts shl be exted by the lessee in respt whof compenson may be payable under these pants or by statute, &

As to
right of
distress.

(a) See p. 676; and see the recent statutory restrictions on the right of distress for rent referred to, p. 676, note; especially the Agricultural Holdings (England) Act, 1883, ss. 44—47; and see 51 & 52 Vict. c. 21, which by s. 9 repeals ss. 49—52 of the former Act; and the following decisions on the Act of 1883, *London, &c., Bank v. Belton*, 15 Q. B. D. 457; *Ex parte Bull*, 18 Q. B. D. 642; *Masters v. Green*, 20 Q. B. D. 807.

As to effect
of Bills of
Sale Acts
on power
of distress.

A provision is often inserted making moneys (other than rent) becoming due to the lessor recoverable by distress in the same manner as rent in arrear, but as such a provision is invalidated by the Bills of Sale Acts (see p. 683, note), it is omitted in these forms. A clause is also sometimes inserted extending the ordinary power of distress for rent to things not distrainable at common law; but this also, whether applying to movable chattels or fixtures, is avoided by the same Acts.

As to best
rent.

By s. 43 of the Act of 1883, where a lease is granted under a power requiring the best rent to be reserved, the increase in the value of the holding arising from improvements made or paid for by the tenant need not be taken into account.

(b) See also p. 678, and the note.

(c) See covenant, *infra*, p. 769.

of the parlars of wch the lessee shl fail to deliver to the lessor or his agent such statemt in writg as hinafter covtd to be delivered previously to the — day of — next follg or in referce to wch the lessee shl when required by the lessor as hinafter provd refuse or neglect to produce full vouchers & rects for the same, such addonal rent of £——, to commce, &c., *as in form I.*

IV. AND AN addonal rent of £—— for every ton of hay, straw, manure, or root crops, wch shl at any time durg the continue of this demise, be removed from the demised premes witht the consent in writg of the lessor, or his agent, such last-mentd addonal rent to be payable on such qtrly days afsd as shl first happen after the happeng of the event on wch the same is made payable, but not to continue as a periodical paymt.

Penal
rents for
removing
manure.

V. AND ALSO PAYG in like mner such further rent as shl be eql to £5 p.c. p.a. upon all moys & expses [over the sum of £——] wch may be laid out or incurred by the lessor at the reqt of the lessee, in or incidental to the erectg of any new bldg or the re-bldg or addg to existg bldgs on, or in under-draing or orwise improvng the sd demised premes: such last-mentd rent to commce & be payable from the half-yrly day for paymt of rent wch shl happen next after the day on wch any moys or expses shl be so laid out or incurred.

Additional
rent for
improve-
ments by
lessor.

VI. THE SD RENT [SEVL RENTS] to be pd clear of all dedons, except landlord's ppty tax [& land tax, & except the excess of any scot (e) or drainage-rate over — s. per acre in any one yr].

Rents to be
paid clear
of deduc-
tions (d).

(d) As to the set-off of compensation due to the tenant, see the Agricultural Holdings (England) Act, 1883, s. 47. By the Tithe Act, 1891 (54 Vict. c. 8), tithe rent-charge is, after the 26th March, 1891, the date of the passing of that Act, made payable by the owner, and an agreement since that date for its payment by the occupier is void (s. 1); but the Act does not apply (see s. 9) to a rent-charge payable under the Extraordinary Tithe Redemption Act, 1886, nor a rent-charge payable under the Tithe Act, 1860, in respect of tithe on any gated or stinted pasture, nor to a rate for each head of cattle turned on common land. Such charges may therefore still be agreed to be paid by the occupier and deducted from the rent.

(e) Some such provision appears proper in cases of fen or marsh lands, where, owing to a breach in the sea walls, or dykes, a large scot may have to be levied.

LESSEE'S COVENANTS (a).

To repair
and paint.

I. AND ALSO will [on being allowed by the lessor rough timber, lime for mortar, bricks, & tiles for that ppose on the sd premes or within — miles thof] at all times durg the sd term keep in good repair & condon the farmhouse & all farm bldgs, cottages, barns, sheds, & other erons, gates, stiles, bridges, culverts, ditches, watercourses, walls, fences & hedges for the time being on the demised premes: AND WILL at least once in every — yrs durg the sd term, or oftener if necy, paint or tar such pts of the same as have been usually painted or tarred. *See Prec. 1II., clause 9, p. 784.*

The same.
Another
form.

II. AND ALSO will at all times durg the sd term keep the bldgs, gates & fences of the sd premes in pper repair [damage by fire & tempest excepted], being allowed half the cost of such repairs, except for thatched bldgs the roofs of wch shl be repaired entirely at the expse of the lessee: AND WILL at all times durg the sd term paint the internal woodwork of the farmhouse at least once in every ten yrs, & the outside of the farmhouse, & such pts of the bldgs as have usually been painted, once in every five yrs with two good coats of oil-paint, & will tar the other outside woodwork of the farm bldgs once in every ten yrs, being allowed half the cost of such paintg & tarrg.

To clean
out ditches.

III. AND ALSO will throughout the sd term clean out at least once durg every yr in a pper mner, & keep in good order all the ditches, watercourses, sluices, sewers, & drains belongg to the demised premes.

Pay for
draining.

IV. AND ALSO will, on the lessor supplyg on the sd demised premes, or within — miles thof, pper pipes, pay for all labour, & other expses, in draing the sd land [being allowed such compenson for the same at the expiron of the tenancy as is proved by the scale contd in the schdle hto (b), & so that the notice required by the 4th section of the Agricultural

(a) For the commencement of the covenants, and the covenants to pay rent, and rates and taxes, see p. 679.

(b) If the general provision as to compensation, *infra*, p. 776, is adopted, say, "such compenson for the same as is hby & by statute provd." See the Act of 1883, ss. 4, 55; and as to set-off by the landlord, see s. 6; and see note, p. 773.

Holdings (England) Act, 1883, is hereby dispensed with]. And further that no pipe-drain shall, without the consent in writing of the lessor, or his agent, be laid at a less depth than — feet from the surface of the ground, & that every such pipe-drain shall communicate with a ditch.

V. AND ALSO will not without the consent in writing of the lessor or his agent, materially alter the present laying out, arrangement, or condition of the said demised premises. Not to alter condition of premises.

VI. AND ALSO will at all times during the said term reside at the farmhouse on the demised premises unless authorised in writing by the lessor or his agent not to do so. To reside.

VII. AND ALSO will cultivate & manage all the demised premises in accordance with the best & most improved, or, "the four-course," or, "five-course" system of husbandry as practised or in use in the county of — [so far as such system may not be inconsistent with any of the special provisions herein contained], & will keep the land clean & in good heart & condition. To cultivate according to custom (c).

VIII. AND WILL in all respects cultivate & manage the farm & lands hereby demised & every part thereof in a good, proper, & husband-like manner, according to the best rules of husbandry practised in the neighbourhood (d). The same. Another form.

IX. AND WILL not grow more than two crops of white corn, or any two crops of the same kind in immediate succession: AND WILL not after notice to quit has been given or received take a second white straw crop off the same land which has borne such a crop in the preceding year without such consent as aforesaid: AND WILL sow not less than one-sixth part of the arable land with a proper proportion of clover & grass seeds in each & every year along with the first crop after summer fallow turnips or other fallow crop. Special provisions as to arable land.

X. AND ALSO will not grow hemp, flax, teasels, or woad, or any other unusual or exhausting crops on the demised premises without the previous consent in writing of the lessor or his agent, nor without such consent leave for seed in any year on the demised Not to cultivate specified crops.

(c) The following clauses as to the mode of cultivation are for the most part common; but the exact provisions must depend on the local custom, or on the circumstances of each case. For other forms, see the Precedents.

(d) As to the conversion of arable or pasture lands into market gardens, and erecting glass houses, if profitable, and usual in the neighbourhood, not being a breach of this covenant, and as to "ameliorating waste" generally, see *Meux v. Cobley*, [1892] 2 Ch. D. 253.

premes any turnips, cole, rape, mangold, mustard, or rye grass, or any plants of a like nature, except so much thof as may be necy for seeding the demised premes from yr to yr.

For culti-
vation of
pasture
meadows.

XI. AND ALSO will not plough, break up, pare or burn any old pasture or meadow or land permanently laid down in grass, or mow or cut for hay any [more than — acres in any one yr, nor the same pce oftener than once in three yrs] of the meadow-land under a penalty of £100 per acre for every acre ploughed, broken up, pared or burnt, & of £50 per acre for every acre mown contrary to this provon, & so in proportion for a less quantity, & will keep the same free from thistles, nettles, & rushes, & ant & mole-hills.

To consume
hay, &c.,
on the pre-
mises (a).

XII. AND ALSO will consume all the hay, straw, fodder, haulm, turnips, mangolds, & other root crops on the premes, or leave the same at feedg price for the incomg tenant, & will in every yr carry out & spread at pper times, & in a husband-like mner, on the demised premes all dung & muck produced by the consumption of the same.

To keep up
a flock of
mountain
sheep.

XIII. AND ALSO will at all times keep up a flock of at least — mountain sheep & lambs, bred & grazed on the demised premes, & will at the end of the tenancy transfer the same to the lessor or the incomg tenant at a valuon.

To replace
fruit-trees.

XIV. AND ALSO will preserve all fruit-trees in the orchards or elsewhere on the sd demised premes, & will plant such good & healthy young fruit-trees as may be required to supply the place of those wch may die or go to decay, or become unproductive, so as to keep the sd orchards well & sufftly stocked with fruit-trees.

Not to cut
underwood
except at
usual
intervals.

XV. AND ALSO will not cut coppice or underwood, except at the usual season accdg to the custom of the country, & will not cut out any coppice or underwood of less than — yrs growth, & will give ten days' notice in writg to the lessor or his agent, of the intention to cut the same, so as to enable him to mark any tellers.

To preserve
trees, &c.

XVI. AND ALSO will preserve all trees, tellers, pollards, & saplings for the time being standg or growg on the demised

(a) As to the bankruptcy of the lessee, see *Lybbe v. Hart*, 29 Ch. D. 8. As to whether such a covenant runs with the land, see *per* Baggallay, L.J., *ib.* p. 19, dissented from in *Clegg v. Hands*, 44 Ch. D. 503, at p. 512, by Cotton and Lopes, L.JJ.

premes from bite of cattle or other injury, & will not cut down, fell or destroy, or top, lop, or prune any such trees, tellers, pollards, & saplings [under the penalty of £—— for every such tree, teller, pollard, or sapling, to be pd in addon to the actual amt of damage done as afsd, & to be recoverable immedly].

XVII. AND ALSO will from time to time durg this demise plash or cut & lay the hedges regularly & in pper season, & stub all borders of hedges, & will, when & so often as he shl new make or cut any of the hedges or fences on the sd demised premes, at his own expse, dig & make good ditches on the side of such hedges or fences in the usual mner, [& also will at the like expse make & maintain good & sufft wire (b), or, “rly,” or, “temporary” fences for preservg any such new made hedges & fences, & the young springs thof from any hurt or damage by cattle or orwise], [& will not cut any hedges (c), plantons, or pollards till they are of the age of —— yrs, except such hedges & pollards as shl be clipped yrly, & also will at all times give ten days’ notice in writg to the lessor or his agent, of the intention to cut any hedges, fences, or plantons, so as to enable him to mark such tellers as he may think fit to be left growg for timber].

To preserve hedges and plantations.

XVIII. AND ALSO will at all times durg the sd term keep all the hedges & fences in good condon, & will yrly at the pper season clip such of the hedges as have been usually clipped.

The same. Another form.

XIX. AND ALSO will not raise or remove, or suffer to be raised or removed, any stone, clay, brick earth, gravel, sand, or minls from the demised premes, except materials for makg or repairg new or existg roads on the sd premes, & will not commit wilful or voluntary waste, spoil, or destron, in or upon the sd premes, or any pt thof, but will use & manage the same in a good & husband-like mner.

To preserve minerals, and not to commit waste (d).

XX. AND ALSO will preserve all bounds, hedges, & fences, & will not suffer any new roads or footpaths to be made, & will

To preserve boundaries and prevent new

(b) In a hunting country omit “wire.”

(c) Omit the word “hedges,” except in cases where the hedges may contain underwood.

(d) As to waste and “ameliorating waste,” see *Meux v. Cobley*, [1892] 2 Ch. 253.

roads or
encroach-
ments.

To keep a
field book.

To allow
lessor to
inspect,
and to
repair on
notice.

To protect
game.

The same.
Another
form.

prevent the enclosure of or encroachment upon any waste lands on the boundaries or frontage of the sd demised premes.

XXI. AND ALSO will keep a field book, showg how every field or pcel of the demised premes has been cropped & cultivated in every yr of the sd term, & permit the lessor or his agent, from time to time to inspect the sd book, & to take copies thof or extracts thfrom.

XXII. AND ALSO will permit the lessor, or his agent, at all seasonable times, to enter into & upon the sd demised premes, & to examine the state of repair & cultivon & condon thof, [& to take any map or plan of the sd premes], & in case the farm-house, farm bldgs, gates, &c., *folly the words in the cove to repair*, on the sd premes or any pt thof, shl be found defective or out of repair, [or in case the sd land or any pt thof shl not be found in a good & pper state of cultivon & condon], & notice in writg of any such defects or mres shl be given to the lessee, or left on the demised premes, the lessee will [if & so far as the case will admit] make good the same in a pper mner within the space of three calr months (a) next after every such notice shl have been so given or left as afsd, to the satisfon of the lessor or his agent.

XXIII. AND ALSO will not, witht the consent in writg of the lessor, or his agent, use upon the demised premes any gun, weapon, net, or other instrumt for the destron of game [wood-cocks, snipes, quails, landrails,] (b) wildfowl, rabbits, or fish (save as provd by the Ground Game Act, 1880), but will protect & preserve the same, & the nests & eggs of all such birds as afsd, & at the reqt of the lessor, or his agent, will give notice to any person to be named by him not to come upon [& will warn off all psons trespassg upon] the demised premes for the ppose of killg, takg, searchg for, or follg the same, & will also allow his name to be used in any informon, action, or prosecon for such trespass, on being saved harmless agst all costs & damages by reason thof.

XXIV. AND ALSO will use his best endeavours to assist in the preservon of the feathered game by protectg the nests,

(a) *Qu.* shorten the notice, having regard to the further notice made necessary before re-entry by s. 14 of the Conv. Act, 1881.

(b) See p. 791, note (g).

& by preventg disturbce of the birds by dogs durg the nestg season.

xxv. AND ALSO will not witht the consent in writg of the lessor, or his agent, assn, underlet, or pt with the posson of, the demised premes or any pt thof (c). Not to assign or underlet.

xxvi. AND SHL previously to the — day of — in every yr of the sd term deliver to the lessor, or his agent, a correct statemt in writg of any improvemt within Pt. 3, of the 1st schdle to the Agricultural Holdings (England) Act, 1883, wch shl have been exted upon the demised premes durg the precedg yr with full parlars of the cost thof, & of each item of expenditure in respt thof with the dates of pchase of any materials pchased for that ppose, & the names of each pson from whom the same shl have been pchased, & shl on reqt, produce to the lessor, or his agent, all vouchers & rects for the sums expended. To furnish particulars of improvements (d).

xxvii. AND ALSO will not sow or plant durg the last three yrs of the sd term any pt of the demised premes with two crops in succession of any of the descripons commonly called white or exhaustg crops, includg thrin wheat, oats, barley, & rye, witht a fallow or green crop pperly hoed & cleaned interveng betn such two white crops, every such green crop to be consumed on the demised premes, & will not durg the sd three yrs plant more than one crop of potatoes in any one field: AND FURTHER will at the commencemt of each of the last two yrs of the sd term sow such pt of the land as shl have been cultivated for green crops or fallow, & pperly manured in the precedg season, not being less than one-sixth pt at the least of the arable land hby demised, with a sufft quantity of good clover or other grass seeds, & pperly harrow in the same: PROV'D THAT on this covt being duly pformed, the lessor shl pay for such clover & grass seeds as shl be sown in the last yr of the sd term, & on wch no cattle, sheep, or other live stk shl As to mode of cultivation at end of term (e).

(c) Add if appropriate, "except by sub-letting the cottages to weekly tenants," and "nor take in any horses, cattle, or sheep to graze on the premes."

(d) As to what are improvements, see *Meux v. Cobley*, [1892] 2 Ch. 253.

(e) This form is adapted to the case of the tenant not being bound to adopt any special mode of cultivation during the greater part of the term. See also Prec. II., p. 779; Prec. IV., p. 787.

have been depastured, the amt so to be pd to be settled in case of dispute by arbitron (a) : AND FURTHER that the lessee will leave in the last yr of the sd term (subjt as hinafter is mentd), pperly fallowed & sown with turnips or other root crop or green crop pperly hoed & managed, the one-fourth pt of the arable lands hby demised wch shl in such last yr be in course of succession to be cultivated for root crops, green crops, or fallows, on being pd for the labour & seed pperly bestowed on the sd land, the amt so to be pd to be settled in case of dispute by arbitron : PROV'D THAT the lessor or the incomg tenant may, if he think fit, enter & make the fallows, & the lessee will in such case permit him, with his servants, carts, horses, ploughs, & other implemts, to enter upon such lands so to be left to be fallowed as afd, at any time or times after the commencement of the last yr of the sd term, for the ppose of breakg up, ploughg, fallowg, manurg, sowg, & orwise preparg the same in the usual course of agriculture : AND FURTHER will leave at the expiron of the sd term one-sixth pt of the arable land in clover ley of one yr's continue only, & permit the incomg tenant, if he shl so desire, at any time or times after the 24th day of August next precedg the expiron of the sd term, to enter upon, break up, plough, fallow, dung, manure, sow, & orwise prepare & manage the lands so to be left in clover ley as he shl think fit.

The same.
Another
form.

XXVIII. AND ALSO will in the last yr of the sd term leave all clover, seeds, hay, straw, dung, muck, & manure wch shl be produced on the premes in such yr for the use of the lessor, but will not do any labour or carriage thto witht a diron in writg from him or his agent : AND WILL in the same yr leave one-fourth pt of the arable land eql in goodness to the genl average of the whole arable land in a summer fallow or other pper preparon for a wheat crop, one other fourth pt thof in a barley or oat stubble, one other fourth pt thof in a wheat stubble, & the remaing fourth pt thof in a seed ley : AND WILL plough & prepare for the sd wheat crop in a pper mner under the diron of the lessee or his agent, in default whof it shl be lful for the lessor, or the incomg tenant, to enter on the

(a) The provisions for compensation in the Agricultural Holdings Act, 1883, do not apply to this.

demised premes with servants, horses, carts, ploughs, & other necy implemts, & to do such ploughg & preparon: AND ALSO in such last yr will, if desired by the lessor, or his agent, but not orwise sow, roll, & harrow in seeds with any corn wch shl be sown on the sd premes, & not suffer such seeds to be depastured.

XXIX. AND ALSO will at the expiron or sooner determinon of this demise deliver up the demised premes & all addons thto [except such fixtures & bldgs (b) as the lessee shl be entled to remove under or by virtue of any Act of Parliamt, & wch the lessor shl not have elected to pchase] in such good & complete repair, & in such state & condon as the same ought to be in, having regard to the covts hinfte contd.

To deliver
up.

LESSOR'S COVENANTS.

I. THAT HE, the lessor, will at all times durg the continue of the sd term repair & keep in repair the exterior, & when necy paint the external wood & iron-work of the farmhouse.

To keep the
exterior of
the farm-
house in
repair.

II. AND ALSO that if the farmhouse, bldgs, & barns, for the time being standg on the demised premes, or any of them, or any pt thof respdy, shl at any time durg the sd term be destroyed or damaged by fire, the lessor will within ——— calr months thrafter, at his own cost sufftly rebld, restore, & repair the same.

To rebuild
buildings
burnt
down.

III. AND ALSO will at all times durg the sd term, when required & on receivg reasble notice, provide within ——— miles of the farmhouse rough timber [bricks, slates, tiles, lime, nails, & iron, except iron gates & hurdles] for repairs required on the sd demised premes.

To provide
materials
for repairs.

IV. AND ALSO will at all times durg the sd term allow the lessee, at his own expse, to get & carry away so much [stone or gravel from any quarry & so much] chalk from any pit on the premes as may be required for use thron.

To allow
lessee to
get chaik.

(b) See 14 & 15 Vict. c. 25, s. 3; and the Market Gardeners' Compensation Act, 1895, ss. 3 & 4; the Agricultural Holdings Act, 1883, ss. 34 & 60; as this case is not affected by s. 55 of the Act of 1883, there appears to be nothing to prevent s. 34 being excluded if desired.

To allow
lessee to
destroy
rabbits (a).

V. AND ALSO will allow the lessee to destroy & take rabbits on the demised premes & in the hedges or banks adjoining the same & belonging to the lessor, at any time during the yr by ferretg with nets, witht dog or gun, [& by the use of dogs & guns from the first day of February to the first day of April in each year, & by means of spring traps set in the rabbit holes & not above ground betn the thirtieth day of September & the first day of April, provd that the lessee shl communicate in writg to the lessor, the names of the psons to be employed for trapping.] Prov'd also that the ferretg [or shootg] pty shl never exceed — in number, & that if any holes are made they shl be pperly filled in & levelled after ferretg, & that if hedges or banks shl be damaged they shl be at once repaired by the lessee, at his own expse.

To pay
compensa-
tion for
mischief
done by
ground
game.

VI. AND ALSO will pay the lessee for all injury or damage done to wheat, oats, or root crops, by hares or rabbits, provd that within — days of any damage being done in respt of wch compenson shl be claimed, the lessee shl give notice thof in writg to the lessor, or his agent. The amt of such compenson shl, if disputed, be settled by arbitron, & shl become payable on the next — day of — or — day of — that shl occur after the same shl have been determined.

Compensa-
tion at end
of lease for
unexhaus-
ted im-
provements
(b).

Right to
compensa-
tion under
Agricul-
tural Hold-
ings Act,
1883.

VII. AND ALSO will on the expiron of the tenancy (subjt to

(a) The rights given by this clause to the lessee, which of course are in addition to those given by the Ground Game Act, 1880, are more beneficial to him than those given by the Act.

(b) The right of a tenant to compensation for unexhausted improvements, is now regulated by the Agricultural Holdings (England) Act, 1883, 46 & 47 Vict. c. 61, which repealed the previous Acts of 1875 and 1876, and which is amended as to market gardeners by the Market Gardeners' Compensation Act, 1895, 58 & 59 Vict. c. 27; and as to land under mortgage, see the Tenants' Compensation Act, 1890, 53 & 54 Vict. c. 57. By the first-named Act improvements executed by a tenant (for which a general right to compensation is conferred by s. 1), are divided into three classes: (i.) Those in the first part of the 1st schedule, for which is required the consent of the landlord, which may be given "upon such terms as to compensation or otherwise as may be agreed upon" (s. 3). In this case it may be convenient to embody the general terms of compensation in the lease, though this cannot affect the landlord's right to impose any other terms as a condition of his consent. (ii.) Those in the second part of the 1st schedule, which includes drainage only, as to which previous notice must be given to the landlord, on which the terms, "as to compensation or otherwise" may be agreed upon, or the landlord may execute the work himself; failing either of which the tenant will be entitled to compensation under the Act (s. 4).

the provons hinafter contd) pay or allow to the lessee compensation, the amt thof to be determined in case of dispute by

The section expressly provides that the notice may be dispensed with and the agreement as to compensation embodied in the lease. (iii.) Those in the third part of the 1st schedule, as to which the consent of the landlord is not required, but by s. 5, if there is any "particular agreement in writing" securing to the tenant "fair and reasonable compensation," compensation will be payable under the agreement and not under the Act; in this case too it seems that the terms of compensation can be determined by the lease, so long as they are "particular," i.e., *semble*, fixed in reference to each particular class of improvements, and also "fair and reasonable." Sect. 7 obliges the tenant to give notice of his claim two months before the determination of his tenancy (see *Schofield v. Hincks*, 37 W. R. 157; 60 L. T. 573; *Re Paul*, 24 Q. B. D. 247), and provides for a counter-notice of any cross-claim by the landlord. By s. 55, any contract, &c., made by a tenant "by virtue of which he is deprived of his right to compensation under the Act," is rendered void "so far as it deprives him of such right." This is subject to the right of fixing the terms of compensation under ss. 3, 4, and 5, and does not prevent the exclusion of any provisions of the Act other than those giving a right to compensation. A covenant by the tenant to execute the improvements would not of course affect his right to compensation. By s. 59 the tenant (other than a tenant from year to year in the cases mentioned in subsecs. 1 and 2) is not entitled to compensation for any improvements (except "manures") begun within one year of the determination of his tenancy; and s. 6 provides for a set-off against the claim of the tenant of (inter alia) any benefit allowed by the landlord in consideration of the tenant executing the improvements, or any claim of the landlord in respect of breaches of covenant committed by the tenant.

Notice of claim.

Exclusion of compensation.

Improvements begun in last year of tenancy.

Set-off.

As to what holdings are within the Act, see ss. 54 and 61. As to whether it applies to a tenancy for a year certain, see 36 Sol. J. 358, 365.

Application of Act.

It may be desirable in some cases, as far as possible and having regard to s. 55, to exclude the operation of the Act as to compensation. Among the methods that have been suggested with this object are a reservation of penal rents for improvements executed without the landlord's consent, and a covenant by the tenant not to execute any improvements without consent (see 28 Sol. J., pp. 146, 162, 195, 211); but both of these provisions are of doubtful validity. Other methods which have been suggested and appear to be better are either (a) to reserve during the last two or three years of the term a higher rent, reducible to the normal rent on the execution in each year by the tenant of improvements within the third part of the 1st schedule to the Act of a certain value; in which case under s. 6 (a) the amount taken off the rent would be deductible from the amount payable for compensation; or (b) to make the compensation agreed upon by the lease (which is often more favourable to the tenant than the compulsory compensation provided by the Act) conditional upon the tenant making no claim under the Act. On behalf of the tenant it should be noticed that s. 59 is more unfavourable to him than the provisions of an ordinary lease.

Methods of excluding the Act.

As to the landlord obtaining a charge for the amount paid by him for compensation, see ss. 29, 30. That the right to obtain a charge on the holding extends to the executors of a landlord tenant for life, see *Gough v.*

arbitron (a), for the benefit derived by the lessor, from—
FIRST, Permanent improvements made by the lessee, with the consent in writg of the lessor or his agent, on the demised premes; **SECONDLY**, For the bones or other artificial manure wch shl durg the last two yrs of the tenancy be with the like consent brought & spread on the demised premes: **THIRDLY**, For the oil-cake or other food brought & consumed durg the last two yrs of the tenancy on the demised premes; so that the amt of such bones, artificial manure, oil-cake, or other food so brought & consumed or spread, in eir of the sd two yrs, does not exceed the average annl quantity brought & consumed, or spread, durg the three yrs immedly precedg the two last yrs of the tenancy; & so that the amt of such compenson shl not exceed one-third pt of the value of the bones, artificial manure, oil-cake, or other food brought & consumed, or spread, durg the last yr of the tenancy, togr with one-sixth pt of the value of the bones, artificial manure, oil-cake, or other food brought & consumed, or spread, durg the last yr but one of the tenancy [in excess of the value of the food & manure wch the lessee may be bound to bring & consume, or spread, as an equivalent for food carried away]. *See also, Prec. II.*, pp. 781, 782; *Prec. III.*, clause 33, p. 786; *Prec. IV.*, pp. 788, 789, 790.

Gough, [1891] 2 Q. B. 665. For the provisions of the Act as to fixtures, &c., see s. 34, and as to notice to quit, see p. 778, note.

As to holdings under two acres, this Act is now in the main superseded by the Allotments and Cottage Gardens Compensation for Crops Act, 1887, 50 & 51 Vict. c. 26; and as to allotments (not exceeding one acre), see the Allotments Act, 1887, 50 & 51 Vict. c. 48, s. 8.

By the Tenant's Compensation Act, 1890, 53 & 54 Vict. c. 57, s. 2 (sub-s.1), a tenant from a mortgagor under an agreement not binding on the mortgagee is entitled to compensation for improvements as against a mortgagee in possession; but the amount may be set off against any rent due; and by sub-s. 2 the mortgagee must give the tenant six months' notice in writing before depriving him of possession, and must then allow him compensation for his crops and improvements, where the agreement was for a tenancy from year to year or for a term of years not exceeding 21, at a rack-rent. S. 3 provides for the registration of charges on compensation for improvements made under s. 31 of the Agricultural Holdings Act, 1883.

(a) As to arbitration, see the Agricultural Holdings Act, 1883, ss. 9 *et seq.*, and as to the case where compensation is fixed by the lease, see s. 17. As to arbitration generally, see the Arbitration Act, 1889, and see the form of clause, *infra*, p. 777. As to the distinction between an arbitration and a mere valuation, see *Re Dawdy*, 15 Q. B. D. 426.

VIII. AND ALSO that the lessee, paying the sd yrly rent of £——, & the sd addl rents in case the same shl be incurred, & pformg all the covts & agrmts on the pt of the lessee hrin contd, may quietly hold the demised premes durg the sd term (b) witht any interruption by the lessor or any pson claimg under him.

For quiet enjoyment.

PROVISOES.

I. PROVD ALWAYS, & these psnts are upon this condon, that in case the lessor shl distrain for rent (c), it shl be lful for him to sell & dispose of the distress or distresses, or any pt or pts thof, subjt to a condon that all hay, straw, fodder, haulm, turnips, mangold, compost, & manure, *the words shd comprise all the produce of the farm covted to be consumed on the premes*, shl be consumed on the premes, & that on a sale being made, subjt to such condons, the lessees shl allow the use of the out-bldgs, barns, yards & fields to the pchaser, free from chge, for the ppose of threshg out or consumg the same.

Proviso as to sales under a distress of things covenanted to be consumed on the premises.

II. PROVD ALWAYS, &c., that it shl be lful for the lessor at any time or times to resume posson of & determine the tenancy of the lessee as to any portion or portions [not exceedg in the whole —— acres] of the sd demised premes for the ppose of sellg or using or lettg the same for pposes other than agricultural or as allotmts [or for any of the pposes mentd in the 41st section of the Agricultural Holdings (England) Act, 1883] on giving to the lessee one calr month's notice of his intention in that behalf, in wch case the lessor shl allow to the lessee a proportionate abatement (to be fixed in case of dispute by arbitron) of the rent hby reserved in respt of the land posson of which shl be so resumed, *or*, “shl make compenson for the same by an abatemt of rent or orwise in mner provd by the

Power to lessor to resume possession of part of land.

(b) Add here, if appropriate, “& the barns & stack-yards until the —— day of —— next after the expiron of the sd term for the stackg, threshg, & dressg the last yr's crop.”

(c) See 56 Geo. III., c. 50, s. 11; *Ridgway v. Lord Strafford*, 6 Ex. 404; *Hawkins v. Walrond*, 1 C. P. D. 280; *Lybbe v. Hart*, 29 Ch. D. 8. As to the law of distress, see p. 762, note.

sd 41st section " & the lessee shl be entled to no other compenson whatsr [& the covts & provons hrin contd shl be applicable to the land as to wch the tenancy shl be so determined in the same mner as far as may be as if the demise thof had expired by effluxion of time]. [PROVD ALWAYS, &c., that in case the powers given by the last precedg provo shl be exercised by the lessor the lessee shl be at liberty to put an end to this psnt demise on giving to the lessor six calr months' notice in writg in that behalf, such notice to be given within — days after the rect of the notice mentd in the precedg provo.]

Proviso
fixing the
terms of
compensa-
tion under
the Agri-
cultural
Holdings
Act, 1883
(a).

III. PROVD, &c., that the notice required to be given by the lessee under s. 4 of the Agricultural Holdings (England) Act, 1883, as to improvemts within Pt. 2, of Schdle I., thto shl be dispensed with, & that if & when the lessee shl be entled under the sd Act to rece compenson from the lessor in respt of any improvemts exted by the lessee upon the demised premes, such compenson shl be determined accdg to the rules & allowces contd in the schdle hto, & be payable on the expiron of the tenancy or as soon thrafter as the same shl be ascertained.

Proviso
that agreed
compensa-
tion is to
be substi-
tuted for
statutory
compensa-
tion (b).

IV. PROVD ALWAYS, & it is hby agrd & decl'd that the compenson hinfte agrd to be pd by the lessor to the lessee in respt of improvemts or any other mres at the end of the tenancy is intd to & shl be in substiton for any compenson wch the lessee shl be entled to rece or claim under the Agricultural Holdings (England) Act, 1883, or any other statute in respt of any improvements exted by him upon the demised premes, & that if the lessee shl make any claim agst the lessor for any such compenson under the sd Act or any other statute the provon hinfte contd for the paymt to the lessee of compenson at the end of the tenancy whether in respt of any improvemts provd for by the sd Act or any other statute or any other improvemts or mres shl wholly cease & be void.

(a) See p. 772, note. This form to be used if it is desired to abide by the Act instead of introducing independent provisions and excluding it altogether. The schedule should specify the particular kinds of improvements mentioned in the Act; the compensation for improvements within Part 3 of Schedule I. to the Act must be "fair and reasonable."

(b) See p. 772, note.

V. **PROVD ALWAYS**, & it is hby agrd that any powers or remedies hby expressedly given to the lessor, in the event of any breach by the lessee of any of the covts hinfte contd, shl be in addon to, & not in substiton for the rts & remedies by law given to the lessor, in respt of or consequent upon any such breach, whether by pcdgs to recover posson of the demised premes, or to recover damages or orwise, all wch rts & remedies may be enforced & pursued in due course of law accdly : [**PROVD ALWAYS** that the clause lastly hinfte contd shl not qualify or affect the arbitron clause hinafter contd.]

Proviso
that reme-
dies given
to lessor
are cumu-
lative.

VI. **ANY DISPUTE** or question wch may arise betn the pties resptg their rts or liabilities under these psnts or in relon to the contract of tenancy hby made shl be refd to the arbitron of a single referee if the pties so agree or orwise of two referees or an umpire, & such arbitron shl be regulated by the provons in that behalf contd in the Agricultural Holdings (England) Act, 1883, if & so far as the case may admit, & orwise by the Arbitron Act, 1889 (c).

Arbitration
clause.

PRECEDENTS (d).

I.

AGREEMENT *for a YEARLY TENANCY. Short Form.*

PREC. 1.

AGRMT made this — day of — BETN A., of, &c., (hinafter called the landlord, wch expression shl include, &c., *see p. 670*), of the one pt, & B., of, &c. (hinafter called the tenant, wch expression shl include, &c.), of the other pt.

Parties.

1. **THE LANDLORD** agrees to let, & the tenant agrees to take **THE MESSE**, farm, & lands, called — Farm, situate in the parish of —, in the coy of —, the parlars whof are specified in the schdle hto, *referce if need be to plan*, as now occupied by —, with the appurts. *Reservon of timber & minls, &*

Agreement
to let.
Parcels.

(c) See the Acts referred to; and above, p. 704, note.

(d) Probably in the present state of agriculture none of the precedents in this collection, except the first, will be of general utility.

PREF. I.	<i>sportg, if intd</i> , pp. 760, 761. THE TENANCY to be from the
From year to year.	— day of —, from yr to yr, until it is determined at the end of the first, or any subseqt yr, by eir pty givg to the other six calr months' notice (a) in writg. At the yrly rent of £—, payable half-yrly, [qtrly] on, &c., the first paymt to be made on the — day of — next [& the last paymt to be made in advce one calr month bfe the expiron of the tenancy.]
Rent.	
Tenant's agree-ments.	AND THE TENANT HBY AGREES
To pay rent and taxes.	2. To PAY the rent at the time, & in mner afsd.
Repair.	3. To PAY all rates & taxes, except [land tax, tithe rent-chge, &] landlords' ppty tax.
	4. To KEEP the farmhouse & bldgs, & all hedges, fences, & gates, & leave the same at the end of the tenancy in good tenantable repair, he being allowed rough timber for repairs within a distce of — miles from the farmhouse.
Consume produce on farm.	5. To CONSUME all the hay, straw, & root-crops upon the farm.
Spread manure.	6. To SPREAD the whole of the manure & muck yrly upon the land.
Preserve timber.	7. To PRESERVE all timber, timber-like trees, & tellers.
Leave fallow.	8. To LEAVE one-third of the arable land in fallow [tare or pea-grattan] in a clean state for wheat at the end of the tenancy for the incomg tenant.
As to white crops.	9. NOT to grow two successive white crops on the same pce of land.
Pasture.	10. NOT to mow any pasture in two successive yrs.
Not to break up pasture.	11. NOT to break up pasture, witht the consent in writg of the landlord or his agent, under a penalty of £50 per acre, & in like proportion fcr any less quantity than an acre, such penalty to be recoverable immedly.
Timber.	12. NOT to cut or lop any timber or timber-like trees.
Manure.	13. AFTER he has given or reced notice to quit, not to cart
As to agri-cultural leases.	(a) See the Agricultural Holdings (England) Act, 1883, s. 33; <i>Barlow v. Teal</i> , 15 Q. B. D. 501. Under 14 & 15 Vict. c. 25, s. 1, an agricultural lease by a tenant for life, though invalid against those entitled in remainder, is good for one year after the lessor's death. See further as to leases by limited owners, <i>ante</i> , p. 705. As to the necessary notice by a mortgagee to a tenant under a yearly tenancy or a lease by the mortgagor, not binding on the mortgagee, and compensation for improvements in such a case, see p. 774, note.

any manure or muck on to the land, witht givg to the landlord or his agent, six days' notice in writg of his intention to do so.

PREC. I.

14. Not to destroy any game or rabbits except as authorized by the Ground Game Act, 1880.

Game.

15. Not to assn or under-let the premes or any pt thof witht the written consent of the landlord, or his agent.

Not to assign.

16. THAT THE landlord shl have ingress & egress, for himself & all psons authorised by him, to the land & bldgs, to inspect the state of repair & condon of the premes, & to cut timber & for sportg & preservg game.

Landlord to have right of entry.

AND THE LANDLORD HBY AGREES

Landlord's agreements.

17. To PUT the farmhouse & bldgs in good tenantable repair at the commencement of the tenancy.

To repair.

18. To FIND rough timber for repairs within — miles from the farmhouse.

Find timber.

19. To PAY the tenant on quittg for all pchased artificial manure, one crop off, & other tenant rts, includg draing, accdg to the custom of the country, as from an incomg to an outgoing tenant, but the rt to compenson under this clause is condonal on the tenant not makg any claim for compenson under the Agricultural Holdings (England) Act, 1883.

Pay compensation (b)

IT IS HBY ALSO AGRD

20. THAT THE landlord shl have a rt of re-entry on non-paymt of the rent for twenty-one days, whether legally demanded or not, or breach of any of the tenant's agrmts. IN WITS, &c.

Proviso for re-entry.

[Schdle of Parcels.]

II.

AGREEMENT *for a Yearly Tenancy in Leicestershire.*
LADYDAY holding. *Full Form.*

PREC. II.

AGRMT, &c., *as in Precedent I., to end of the reservon of sporting.*

THE TENANCY shl be from the 25th day of March next, from

Tenancy to

(b) See p. 772, note.

<p>PREC. II. be from year to year. Rent.</p>	<p>yr to yr, determinable at the end of the first, or any subseqt yr, on six calr months' notice (a) in writg to quit given by eir landlord or tenant to the other, At THE yrly rent of £—, payable qtrly, on the 24th day of June, &c., in every yr, the first paymt thof to be made on the 24th day of June next, & after notice to quit has been given by eir pty, the last qtr's rent shl be due & payable in advce one calr month bfe the end of the tenancy [AND AT the further rents, <i>penal & addonal rents</i>, pp. 678, 762].</p>
<p>Tenant's agree- ments.</p>	<p>THE TENANT AGREES <i>To pay rent</i>, p. 679; <i>taxes</i>, p. 679; <i>to reside</i>, p. 765; <i>to repair</i>, p. 764; <i>to cultivate land accdg to custom</i>, p. 765; <i>not to mow grass land</i>, p. 766; <i>form XI., et seq.</i>; <i>to consume hay, &c., on premes</i>, p. 766; <i>to preserve trees</i>, p. 766; <i>to preserve hedges</i>, p. 767; <i>to allow lessor to inspect</i>, p. 768; <i>to protect game</i>, p. 768, <i>not to assn</i>, p. 769; AND ALSO will, in the autumn bfe the tenancy ends, sow wheat at the pper time on all the land, wch in due course ought to be sown with wheat; but if, at any time after the 31st day of October in the last yr of the tenancy, he shl have failed so to do, or if the landlord or incomg tenant shl at any time be dissatisfied with the mner in wch, or the time at wch, the work is being done, he will, on being required so to do by the landlord or the incomg tenant, immedly deliver to eir of them posson of, & permit him to enter upon, all the land required by the landlord or incomg tenant for the ppose of being sown with wheat: AND ALSO will, on the 6th day of January bfe the end of the tenancy, deliver to the landlord or incomg tenant, posson of, & permit him to enter & remain upon all the lands to be fallowed, or to be sown with pulse & spring corn, accdg to the pper cultivon of the farm, except such lands as are then growg turnips: AND ALSO will, on the sd 6th day of January, provide in & upon the farm for the use of the landlord or incomg tenant, from that day until the 25th day of March follg, suffit stablg-room & straw for beddg, with a pper quantity of hay or seeds for the workg horses employed upon the lands given up, the value of such hay & seeds, & the herbage of the land entered upon, to be pd for by the landlord or incomg tenant at feedg prices on a valuen</p>
<p>Sow wheat in last year.</p>	
<p>Give up fallows in January;</p>	
<p>And provide stabling for incoming tenant.</p>	

(a) See p. 778, note.

to be made in the usual mner (b) : AND ALSO will, on the 14th day of February bfe the end of the tenancy, deliver to the landlord or incomg tenant posson of & permit him to enter upon one half of the turnip-land above excepted : or, if the pper proportionate quantity of land shl in breach of this agrmt not be in turnips in the last yr, then so much as wd be eql to one-half of the land that ought to have been in turnips, & will deliver posson of the remr as soon as the turnips are eaten off, but the tenant shl not have any claim for eatage in respt of any of the turnip-land delivered up bfe the end of the tenancy : AND LASTLY will permit the landlord & incomg tenant & their agents to do all things necy for carryg these regulons, on the determinon of the tenancy, fully into effect.

PREC. II.

Give up
half the
turnip
land in
February.

Permit
landlord
to carry
agreement
into effect.

Landlord's
agree-
ments.

To pay
compensa-
tion at end
of tenancy.

THE LANDLORD AGREES

THAT he will, on the expiron of the tenancy (subjt to the provons hinafter contd), pay or allow to the tenant compenson (the amt thof to be determined in case of dispute by arbitron), at the end of the tenancy, for unexhausted improvemts & labour accdg to the rules follg, that is to say :—

First. For the cost of seed (provd always that it is good & clean), & of the labour of once ploughg, & of scarifyg, harrowing, & sowing the land then sown with wheat in due course, & of the labour pperly bestowed on clay-land summer fallowed in due course, wch is unfit for turnips, cole, or other fallow crop (provd such land has been worked in a good & husbandlike mner, but not orwise), & of the seed & labour of sowing such clay-land fallow, & also the cost price of the labour of sowing all grass & clover seeds sown with the first crop of corn after fallow turnips, or other fallow crop, in the spring precedg the end of the tenancy, provd that the tenant shl not stk the land sown with grass or clover seeds after the — day of — precedg the end of the tenancy.

For seed
and labour.

Second. For bones pperly & benefly used in the yr precedg the end of the tenancy for turnips or other green crops, the whole of the cost if used dry, & three-fourths if dissolved in acid, to be allowed exclusive of carriage.

Bone
manure.

Third. For guano or other well-known & approved artificial manure pperly & benefly used in the yr precedg the

Artificial
manure.

(b) This is not affected by the Agricultural Holdings Act, 1883.

PRBO. II.
—

end of the tenancy for turnips or other green crops consumed by sheep on the ground where grown, two-thirds of the cost price to be allowed exclusive of carriage; but when the crop has been drawn & consumed in the yards by cattle, one-half of the cost price to be allowed exclusive of carriage.

Oil-cake.

Fourth. For oil-cake given to cattle & sheep, one-third of the cost price of that so used within twelve calr months bfe the end of the tenancy, & one-sixth pt of the cost price of that so used in the previous yr, to be allowed exclusive of carriage.

Lime.

Fifth. For lime pperly & benefly used within twelve months bfe the end of the tenancy, if no crop has been taken from the land limed in that yr, the whole cost, includg labour, to be allowed: if one crop has been taken from such land, four-fifths of such cost to be allowed, & so on, diminishg the allowce by one-fifth for each crop taken from such land.

Claying,
&c.

Sixth. For claying, marling, or chalking, a similar allowce to that for liming.

Drainage.

Seventh. For all draing done by him durg the last five yrs of the tenancy, provd it is well & pply exted, accdg to the rates follg, that is to say:—the whole cost of draing done within twelve calr months bfe the end of the tenancy; four-fifths of the cost of draing done in the previous yr; & so on, diminishg the allowce by one-fifth for each yr that shl have elapsed since the drainage was done.

Valuers to
estimate
sums owing
to land-
lord for
breaches of
agreement,
and deduct
from sums
to be
allowed to
tenant-(a).

AND IT IS HBY AGRD that the valuers or valuer shl make an estimate of all sums due from the tenant to the landlord for arrears of rent, or for dilapidons or injury to the farm by bad husbandry, or breach of agrmt or orwise in any respt, & of the cost of puttg into repair & into good tenantable condon all the bldgs, gates, fences, drains, water-courses, & other things on the farm, to the repair or maintenance of wch the tenant is liable, & then being out of repair or not in good tenantable condon, & the amt of such estimate shl be deducted from any sums to be due to the tenant at the end of the tenancy, or, at the option of the landlord, shl be pd to him by the tenant on demand. *Provo excludg statutory rt to compenson*, p. 776.

(a) Compare the Agricultural Holdings Act, 1883, s. 6.

Provo for re-entry, p. 698, "but notwg any such re-entry, the tenant shl be entled to all outgoing allowces as bfe mentd, subjt to a dedon for rent in arrear, dilapidons, & orwise as afsd." *Quiet enjoymt*, p. 775. *Arbitron*, p. 777. IN WITS, &c.

PREC. II.
—

III.

AGREEMENT *for a* YEARLY TENANCY *in* KENT *from*
11th OCTOBER. *Full Form (b).*

PREC. III.
—

AGRMT made this — day of — BETN, &c., *as in*
Precedent I.

1. THE LANDLORD agrees to let, & the tenant agrees to take, ALL THAT farm, called — Farm, situate in the parish of —, consistg of — acres or thrabouts, togr with the farm-house & bldgs belonging thto, To HOLD the same from the 11th day of October, 18—, from yr to yr, until eir pty shl have given six calr months' notice in writg of his intention to determine the tenancy, in any case the tenancy to cease on the 11th day of October, 18—, At THE yrly rent of £—, payable on the 6th day of April & the 11th day of October, unless, as regards the last half-yrly paymt, demanded at any time within one month previous to the expiron of the tenancy, in wch case it shl become due immedly on such demand.

Agreement to let.
Parcels.
From year to year.
Rent.

THE LANDLORD RESERVES.

Landlord reserves

2. ALL THE pollard trees, tellers (whether on stems or orwise), timber, & timber-like trees, with liberty of ingress to plant, top, fell, & carry away the same.

Timber.

3. ALL GRAVEL, brick, earth, quarries, & minls, with liberty to work, use, & carry away the same.

Minerals.

4. THE RT to take & resume land for public bldgs & public works, payg the tenant compenson [in the mner provd by the 41st section of the Agricultural Holdings (England) Act, 1883].

Right to resume land.

5. THE EXCLUSIVE rt of sportg, subjt to the rts of the tenant under the Ground Game Act, 1880.

Right of sporting.

(b) See notes to preceding Precedents and Clauses.

PREC. III.	6. THE FREE rt at all times of entry for inspon & other
Right of entry.	reasable pposes.
Tenant agrees	THE TENANT agrees
To pay rent and taxes.	7. To PAY rent & taxes.
To reside.	8. To RESIDE on the premes.
To repair.	9. To KEEP in good repair the farm-house, & all the bldgs, fences, gates, stiles [culverts, pounds], bridges & premes, the same havg been put by the landlord in tenantable repair at the commencement of the tenancy ; & the landlord, upon reasble notice findg & allowg on the premes, or within — miles distce, all rough materials (except straw for thatchg & glass), to be fetched by, & at the cost of, the tenant, all damages by tempest, above £20 at any one time, or by fire, excepted.
To keep roads metalled.	10. To KEEP the farm-roads well metalled, & in good repair.
To paint internally.	11. To PAINT, paper, & whitewash the farmhouse & bldgs internally every seven yrs.
To paint externally.	12. To TAR & paint the exterior of the farmhouse & bldgs & other premes usually tarred & painted, every four yrs.
To repair on notice.	13. To REPAIR on [three] months' notice.
To bear proportion of cost of sawn timber.	14. To PAY one-fourth of the cost of all converted or sawn timber used in repairs, if found by the landlord, instead of rough timber.
To fallow one-seventh of land.	15. To MAKE annlly one-seventh pt of the arable land a good summer fallow, to be ploughed not less than — times, with suitable dressgs, & to keep the lands at all times in a clean state, & cultivated accdg to the best course of husbandry.
Not to grow for seeds.	16. Not to leave for seed any turnip, rape, mustard, rye-grass, mangold, flax, or other such seeds on the sd premes (except so much of such seeds as may be required annlly for seed by the sd farm), witht bringing on fifteen yards of good rotten dung per acre, or an equivalent in other manures.
To grow hops.	17. To KEEP up in good plant not less than — acres of hops.
To stock farm.	18. To KEEP the farm sufftly stocked, & not to stall off any of the sheep depasturg thron.
Not to break up pasture.	19. Not to break up any pasture-land witht the written consent of the landlord or his agent, or to mow any pt thof in three successive yrs, under a penalty of £50 for every acre so broken up, & £10 for every acre so mown, & so in proportion for any less quantity than an acre, such penalties to be re-

coverable immedly as liquidated damages, & within six months after mowing, where the hay is not consumed on the farm, to manure one-third pt of the lands mown with not less than twenty-five yards of good rotten dung per acre, or other manure equivalent thto, & not to mow in any one yr more than — acres of the pasture-land. PREC. III.
—

20. To CONSUME all the grass hay upon the farm, unless the landlord or his agent gives his written consent to the contrary. To consume hay.

21. Not to carry off from the farm any of the hay, straw, haulm, clover or roots, witht bringing on to the farm immedly [previously (a)] in exchange four cubic yds of good dung for every load of hay, straw, haulm or clover so carried off, & fifteen yds of good dung for every acre of roots carried off, or an equivalent in other manures, for such quantities resp'y, such manure & dung, togr with manure made on the farm, to be spread in a husbandlike mner on the land in every yr, or in the last yr of the tenancy, left made up in pper maxhills, the tenant being pd for his labour on the same accdg to the custom of the country. Not to carry off hay, &c., without bringing manure on.

22. To GIVE, if required, at every audit, an acct of the straw & hay sold off, & the manure brought on the land in the precedg yr. Account for hay, &c.

23. Not to prune, top, or lop any of the timber-trees injuriously, under a penalty of £10 for each tree: & not to cut down or destroy any of the timber or timber-like trees under a penalty of £20 for every tree, such penalties to be recoverable in the same way as the above-mentd penalties. Not to cut timber.

24. To PRESERVE all fruit-trees, & plant fresh ones in lieu of those dying, or becomg decayed. Preserve fruit-trees.

25. *To preserve boundaries & prevent encroachmts*, p. 767.

26. *To cleanse ditches*, p. 764.

27. *Not to assn or underlet*, p. 769.

28. To sow seeds in the last yr with the wheat or spring corn, & not to turn any stk or sheep into such seeds to feed them injuriously after harvest. Sow seeds.

29. To LEAVE, at the end of the tenancy, two-seventh pts of the arable land in a fit state, & pper tilth for a wheat Cultivation at end of tenancy.

(a) See *Warwick v. Williams*, 38 Sol. J. 742.

PREC. III.

After
harvest
to allow
incoming
tenant to
plough.

Landlord
agrees

To find
materials
for repairs.

To rebuild
in case of
fire.

To allow
for hay,
&c., left
on farm.

For labour
on fallows.

For pur-
chased
manures.

Seeds.

Labour on
stubbles.

Use of
barns.

For hop
poles.

For under-
wood.

For paint.

For oil-
cake, &c.

season & the remainder in eql proportions of clover ley, podware, mangold, & rape.

30. To ALLOW the incomg tenant, after the harvest in the last yr of the tenancy, to enter the stubbles & plough the same in case the outgoing tenant is unable or unwillg to pform the work required to be done by the new tenant.

THE LANDLORD agrees

31. To FIND, within six weeks after notice, rough timber or other pper materials for repairs (except as afsd) within — miles of the premes, & to bear half the expse of labour, nails, gate-irons, & staples in such repairs.

32. To REBUILD, in case of fire, the house & premes within six months upon such a scale as the landlord shl think suitable & pper for the farm.

33. To ALLOW the tenant for all the hay, straw, haulm, chaff, and litter left on the farm at feedg price, & for the clover left on the farm, at sale price; To pay for all labour on the fallows & on the manures durg the last yr; To pay for pchased manures brought on durg the last yr, & from wch no benefit has been derived by the tenant, except any unreasonably & unnecessarily pchased & except any brought on under Clause 21 (a); To pay for seeds sown reasonably & seasonably by the tenant accdg to this agrmt; To pay for all labour pperly bestowed upon stubbles after harvest, unless the landlord shd have signified that he did not require any such labour bestowed, but the tenant to be in such case found all reasble work for his horses; To allow the tenant the use of the barns until the — day of — next after the end of the tenancy; To pay for hop-poles on not exceedg — acres of land; To pay for the underwood down to the stub; To pay for tar & paint wch has been pperly used on the premes by the tenant; To pay the tenant one-fourth pt of the cost price of all linseed, rape, or cotton cake consumed by cattle or sheep durg the last yr of the tenancy, & also one-eighth pt of all corn fed by cattle, sheep, or swine, provd there has been no crop taken from the manure or the fields since the feedg.

34. *The above allowces to be in substiton for compenson provd by statute, p. 776.*

(a) Compare Agricultural Holdings Act, 1883, s. 6 (b).

35. FOR QUIET enjoymt by the tenant on paymt of rent & pformce of this agrmt witht interruption by the landlord or any one claimg under him. PREC. III.
—
For quiet enjoyment.

36. THE LANDLORD shl have a rt of re-entry on non-paymt of rent within twenty-one days after the day for paymt, whether demanded or not, or on breach of any of the agrmts on the pt of the tenant [or on his becomg bkpt, or enterg into liquidon or compoundg with his credors]. Proviso for re-entry.

37. *Arbitron*, p. 777. As WITS, &c.

IV.

AGREEMENT for a YEARLY TENANCY in WORCESTER-SHIRE (b). PREC. IV. —

PARTIES, as in Precedent I.

1. *Agrmt to let, &c., as in Precedent I., clause I.*

THE TENANT hby agrees as follows:—

Tenant agrees

2. *To pay rent*, p. 679.

3. *To pay rates & taxes*, p. 679.

4. AND ALSO will pay in like mner such further rent as shl, &c., “in underdraing the sd premes,” p. 763, clause v.

5. *Add appropriate provons as in precedg forms, as to any mres not provd for in the follg clauses.*

6. ALL hay, straw, roots, cabbages, & other food for cattle grown upon the sd farm shl be consumed thron, or if sold, one half of the proceeds of such sale shl within six months after the sale be expended in manure approved by the landlord or his agent, to be applied eir to green crops, or to the pasture land, the other half in oil-cake or linseed to be given to cattle or sheep. All manures, whether made from the produce of the farm, or pchased in exchange for such produce sold, shl be used upon the sd farm, or in the last year of the tenancy left for the benefit of the succeedg tenant. Notice shl be given by the tenant to the landlord or his agent previous to any such sale of hay, &c., *as above*, & vouchers shl be produced for the manure or oil-cake bought instead thof. If any hay, &c., *as above*, be destroyed or damaged by fire the value thof shl be

To consume hay, &c.

(b) See notes to preceding Precedents and Clauses.

PRBO. IV.

expended in the pchase of other hay, &c., *as above*, or in manures & oil-cake in the same mner as if such hay, &c., *as above*, had been sold.

To farm properly.

7. THE LAND shl be kept in a clean & good state of cultivon & so cropped that at the expiron thof the arable land shl be in the condon hinafter mentd, or the tenant shl pay to, or be pd by, the landlord for any devion thfrom such sum as shl be determined by arbitron, as hinafter mentd.

On termination one-half land to be ready for white straw crop.

8. ONE HALF of the arable land shl, on such expiron of the tenancy, be clean & in good condon & fit to plant with white straw crops. Of such half pt, one moiety shl have been fallowed (with or witht green crops) durg the previous summer; the other moiety thof shl have been after being manured wholly under clover or mixed grass seeds, or pt in clover & the rest beans or peas, none of the clover or other grasses havg been allowed to stand for seed.

One-fourth land to be sown with clover.

9. ONE-FOURTH of the arable land shl have been sown in the spring of the yr precedg the terminon of the tenancy with clover or other pper mixed-grass seeds upon land fallowed the previous yr & clean; the seeds, sowg, & harrowg to be pd for by the landlord or his incomg tenant provd they have not been grazed after harvest.

Not more than one-fourth of land to require fallowing.

10. NOT MORE than one-fourth of the arable land shl require to be fallowed in the yr after the terminon of the tenancy, nor require an outlay of more than fifty shillings per acre to clean it. If it requires less than that sum the landlord or his incomg tenant shl pay the diffe, if more than that sum the tenant shl pay it.

11. *Arbitron clause*, p. 777.

Duties of referees.

12. THE REFEREE or referees or umpire shl first consider how far the state of the farm differs if at all from that hrin stipulated, & shl decide whether the tenant or the landlord or his incomg tenant is entled to any & what compenson on acct of such varion. He or they shl then settle the other claims betn the pties upon the follg basis.

Sum to be paid according as half the land is or is not ready for white straw crops.

13. THE LANDLORD or his incomg tenant shl pay after the rate of fifty shillings per acre for all land in excess of one-half wch under the above condons is fit to be planted with white straw crops or shl be pd by the tenant at the same rate for all short of one-half of the arable land so fit.

14. NOT LESS than one-fourth of the clover or mixed grass seeds shl be mown for hay durg the last yr for the use of & to be pd for by the incomg tenant. For the remr of the land whron clover or other grasses have been grazed the whole summer by sheep, the incomg tenant shl pay after the rate of forty shillgs per acre, provd such land be clean, & that only one crop of corn has been taken since the previous fallow.

PREC. IV.

As to cultivation of clover.

15. THE TENANT shl be entled to the sum of fifty shillgs per acre for all clean fallows, whether after vetches eaten while green, or bare fallows. If not clean & ready to plant with corn, the cost of makg them so shl be deducted. For all root crops he shl be pd the value, not the cost of cultivon, provd the land be clean. If it be not so the cost of cleang it shl be deducted.

Tenant to be paid for fallows.

16. IF THE tenant has not sold hay, &c., *as above, clause 6*, & has pchased manures within the last two yrs of the tenancy, or if he has pchased manures in excess of the quantity required to replace the hay, &c., *as above*, so sold, he shl be pd one-half the cost of all such pchased manures in excess of the quantity so required wch shl have been applied to green crops or grass land in the last yr of the tenancy, & one-fourth of the cost of that in the last yr but one, such cost not havg exceeded forty shillgs per acre. He shl be pd for all unprepared bones & lime used upon any arable land durg the last four yrs of the tenancy, deductg one-fourth for every yr's use; & on pasture land durg the last six yrs, deductg one-sixth for every yr's use, provd that such pasture land has not been mown in that time; & for every other fertilizer of a permanent nature such allowce as the arbitrors may determine; & also one-half of the cost of all oil-cakes or linseed consumed durg the last yr, & one-fourth of that in the last yr but one, provd such oil-cake or linseed has been given to cattle & sheep, & does not exceed the average of the four yrs precedg the last yr of the tenancy.

Tenant to be paid for roots not sold, and for purchased manures and oil-cake.

17. THE TENANT shl not retain any pt of the bldgs or land after the terminon of his tenancy (except the use of the barns for threshg & winnowg only), but shl be pd the value of all hay, &c., *as above, clause 6*, remaing on the premes. The referee or referees or umpire shl fix the times for threshg & deliverg such straw to the incomg tenant.

Tenant to have use only of barns after termination.

18. THE TENANT shl be pd such sum as the referee or Tenant to

PREC. IV. referees or umpire may determine for all permanent
 be paid for improvements. improvemts made with the sanction in writg of the landlord or his agent.

Arbitration to apply on bankruptcy.

19. IN CASE the tenancy shl determine by bkptcy or arrangemt or compon with or for the benefit of credors the arbitron clause shl apply, & the referee or referees or umpire shl have full power to adjudicate on all questions of compenson, havg regard to the time when the tenancy so determined; & the tree for credors shl stand in the place of the tenant.

20. *Provon that compenson provd for shl be in lieu of statutory compenson, p. 776.*

21. *Proviso for re-entry, p. 698. IN WITS, &c.*

V.

LEASE for a TERM (a).

PREC. V.

Parties.

Wit-
nesseth.

Demise.

Parcels.

Haben-
dum.

To lessee
for term.

THIS INDRE made the — day of —, BETN A., of, &c. (hinafter called the lessor, wch expression, &c., see p. 670), of the one pt, & B., of, &c., farmer (hinafter called the lessee, wch, &c.), of the other pt, WITNETH, that in conson of the rents & covts on the pt of the lessee hinafter reserved & contd, the lessor doth hby demise unto the lessee ALL THAT messe or farmhouse & all those pces of land situate in the parish of —, in the coy of —, known as — Farm, as the same are now in the occupon of —, & wch are more parlarly deacd in the schdle hrunder written, *referce if need be to plan*, the nos. in wch schdle [& plan] correspond with the nos. in the ordnce map of the sd parish. *Reserron of timber, p. 760; minls, p. 761; sportg, p. 761.* To HOLD the premes UNTO the lessee from the — day of —, for the term of — yrs, *Reserron of fixed rent, p. 676; [penal rents, p. 762; improvemt rents, p. 763 (b)]; the rents to be pd clear of dedons, p. 763; Covts by*

(a) See Notes to preceding Precedents and Clauses.

(b) In the lease from which this precedent was taken the improvement rents were £5 per cent. on sums expended on improvements other than cottages, and £4 per cent. on sums expended on cottages.

lessee to pay rent, p. 679; pay taxes, p. 679; to reside, p. 765; [to pay for draing, p. 764]; to repair, p. 764; not to alter the condon of the premes, p. 765; to insure & rebuild, p. 686; to clean out ditches, p. 764; to cultivate accdg to custom, p. 765; insert the special stipulons (if any) to be observed, first as to cultivon of arable, then of meadow or pasture land, & lastly as to the cuttg of underwood & preservon of timber, &c., see above, pp. 765 to 767; the details of these clauses in each case will depend on the nature of the farm & the custom of the district; [to preserve hedges, p. 767]; to allow lessor to inspect, p. 768; [to keep a field book, p. 768]; to protect game, p. 768; not to assn or underlet, p. 769; covts (c) as to method of cultivon durg the last two or three yrs of tenancy, see above, pp. 769 to 771, 780, 785, 788; to deliver up at end of term, p. 771; Power of re-entry, p. 698; Provo as to sales under distress of things corted to be consumed on the premes, p. 775; covt by lessor to provide materials for repairs, p. 771; to allow tenant to destroy rabbits, p. 772; to compensate for unexhausted improvemts, see pp. 772, 779, 781, 786, 789; Provon that compenson is to be in substiton for statutory compenson, p. 776; for quiet enjoymt, p. 775; arbitron clause, p. 777. IN WITS, &c.

PREC. V.
 Lessee's
 covenants.

Lessor's
 covenants.

[Schdle of pcels.]

VI.

LEASE of SPORTING RIGHTS (d).

PREC. VI.

THIS INDRE made the — day of — betn A., of, &c.
 (hinafter called the lessor, wch expression shl include the pson

(c) The details of these clauses in each case must be settled, having reference not only to the nature of the farm and the county in which it is situated, but also to whether the tenant is restricted as to the mode of cultivation during the earlier part of the term.

(d) This demise must be by deed, see *Bird v. Higginson*, 6 A. & E. 824. By virtue of the Ground Game Act, 1880 (43 & 44 Vict. c. 47), this lease cannot interfere with the right of the tenants in occupation of the land, or of the lessor himself when he is in occupation, *Morgan v. Jackson*, [1895] 1 Q. B. 885, to kill ground game; but the lessee has full power to institute legal proceedings as if he were the exclusive owner of the sporting rights.

PRBO. VI. —	<p>or psons for the time being entled to rece the rent hby reserved where the context so admits) of the one pt, & B., of, &c. (hinafter called the lessee, wch expression, &c., see p. 670), of the other pt; WITNETH that in conson of the rents & covts on the pt of the lessee hinafter reserved & contd, the lessor doth demise unto the lessee the exclusive rt with friends, servants, & others, of shootg [huntg, coursng, fishg, fowlg], & sportg over, & takg all & all mner of game [woodcocks, snipes, quails, landrails] (a), hares, rabbits, wild fowl, & fish [& of trappg vermin] upon & from the lands, woods, & hds descd in the schdle hto, subjt as to such of the sd lands, woods, & premes as are in the occupon of tenants of the lessor to the rts conferred upon the sd tenants by their leases or agrmts of tenancy or by law; WITH power to enter upon all the sd premes for the pposes afsd or for preservg the game, wild fowl, or fish [& to have & carry away for his own use the game, rabbits, & other animals of the kinds afsd there killed & taken by him (b)]: To HOLD the same unto the lessee for the term of — yrs, from the — day of —, determinable as hinafter mentd, paying therefor yrly durg the sd term hby grted, & so in proportion for any less time than a yr the rent of £—, witht any dedon, by eql qtrly [half-yrly] paymts, &c., see p. 676 [savg & reservg to the lessor full & free liberty to cut & fell timber on the sd lands & premes, & to cut down or grub up the underwood growg thron]; covts by lessee to pay rent, p. 679, <i>omittg the words</i> “except as afsd;” to pay rates & taxes, p. 679, “upon the sd rts & privileges hby demised or on the owner or occupier in respt thof;” AND will keep down the number of hares & rabbits on the sd premes so as to prevent them from becomg injurious at any time to the woods of the lessor or the crops of his tenants (d); AND shl from time to time pay to the lessor</p>
Wit- nesseth. Parcels.	
Reserva- tion of rent.	
Right of lessor to cut tim- ber (c).	
Lessee's covenants.	
To keep down hares and rabbits.	

As to the right to turn out game bred on other land, see *Birkbeck v. Paget*, 31 Beav. 403.

(a) See p. 761, note (g).

(b) The right conferred by the words in brackets makes the demise one of an interest in land as distinguished from a mere licence, *Webber v. Lee*, 9 Q. B. D. 315.

(c) This right does not require express reservation, *Gearns v. Baker*, 10 Ch. 356.

(d) The lessor can recover under this covenant only nominal damages for injury inflicted on a tenant and not on himself, and for which he is not liable to the tenant, *West v. Houghton*, 4 C. P. D. 197.

compenson for any mischief or damage that shl be done at any time by the sd hares & rabbits to the sd woods or crops [AND also will at the expiron or sooner determinon of the sd term leave in or upon the sd premes a breedg stk of game & hares eql to that wch now exists thron]; AND further that the lessee will not at any time durg the sd term assn or underlet the rts & privileges hby grted or any pt thof witht the previous consent in writg of the lessor; AND will at all times durg the sd term employ a pper keeper or keepers to protect the wood & underwood upon the sd premes, & to warn off all psons who durg the sd term shl sport or orwise poach or trespass thron in pursuit of game or rabbits; AND will pay all expses of & relatg to the prosecon of trespassers in search of game; AND will not do or permit any spoil or damage whatsr to the sd lands & premes or the crops thron; Provd always, &c., *as in power of re-entry*, p. 698, down to "credors," then & in any such case it shl be lful for the lessor by notice in writg under his hand to determine this psnt demise, & thrupon these psnts & the rts & privileges hby grted shl absolutely cease & become void (but witht prejudice to any rt of action or remedy wch shl have accrued to the lessor in respt of any breach of any of the covts & provons hrin contd); *covt by lessor for quiet enjoymt*, p. 695, "of the rts & privileges hby demised"; [Provd always, &c., that it shl be lful for the lessor at any time durg the term hby grted to determine the rts & privileges hby demised as to any pt or pts of the sd lands, woods, & premes not exceedg in the whole — acres, makg compenson for the same by a redon of the rent hby reserved, the amt of such redon to be fixed in case of dispute by arbitron under the provon hinafter contd]. *Arbitron clause*, p. 777. IN WITS, &c.

PREC. VI.

To keep up
a stock of
game.Not to
assign, &c.To keep off
trespassers,
&c.Power for
lessor to
determine
lease.Power to
lessor to
determine
rights as to
portion of
the land.

[Schdle of lands.]

LEASES (MINING) (a).

PARCELS.

Unopened
mines with
surface.

I. ALL THOSE pces of land, &c., *descd with referce to schdle & map*, p. 379, & all coal, cannel, ironstone, bldg-stone, & clay, *or*, “ & all that mine, bed, or seam of coal called —, [& all other, if any, the mines, beds, or seams of coal overlaying, *or*, ‘situated below,’ the — seam] & all seams or beds of fireclay associated & capable of being worked in conjunction with the — seam, [or with any such other mine or seam of coal as *afsd*],” *or*, “ & all mines, veins, & beds of tin, tin ore, copper, copper ore, lead, lead ore, & other metals, ores, & metallic minls *whatsr*,” situate, lying, & being in or under the sd pces of land. Togr with full liberty & power for the lessees (b), their agents & workmen, &c., *to work mines, see below, form v.*

Mines
without
surface.

II. FULL & EXCLUSIVE LIBERTY & licence to search for, dig, mine, & work all coal, ironstone, bldg-stone, & clay, *for varions, see last form*, situate, lying, & being in or under all those pces of land, &c., & all [coal, &c., & other minls] there found to get, raise, convert, [make merchantable & fit for sale] & carry away for their own use.

Opened
collieries,
&c., with
part of
surface.

III. ALL THOSE pces of land situate, &c., & all the bldgs & erons thron, & the pits & shafts now open thron, & known as the — colliery, & the engines, boilers, & other fixed machy, fixtures, & works, in, upon, under, or about the same: AND

(a) As to coal mines, see the Coal Mines Regulation Act, 1887 (50 & 51 Vict. c. 58), especially ss. 36, 37, 38. As to other mines, see the Metalliferous Mines Regulation Act, 1872 (35 & 36 Vict. c. 77), especially ss. 12, 13, 14, amended 38 & 39 Vict. c. 39. As to mines royal, see 32 Sol. J. 657. As to quarries, see the Quarries Act, 1894 (57 & 58 Vict. c. 42).

(b) As mining leases are commonly taken by two or more lessees, the word “lessees” in the plural is used throughout these forms.

ALSO all coal, ironstone, bldg-stone, & clay, *or as the case may be*, within or under the same pces of land, or within or under all those pces of land, situate, &c. : AND ALSO all rlys, tramways, roads, way-leaves, easemts, & convenices belongg to or used in connon with the sd colliery & works.

IV. ALL THOSE slate rocks, slate quarries, & beds of slate of whater description & quality, wch now are or at any time or times hrafter durg the term hby grted, shl or may be opened & discovered in, upon, or under the pces of land, &c. : AND ALSO all tramways, inclines, & other roads, levels, drifts, & works now existg upon or under the sd lands hinfte descd [& upon or under the lands, &c., *being lands not comprd in the demise*], & used or intd for gettg, raisg, or transportg the slate from the lands & hds hinfte descd, or for pposes connected thwith, & all trams, plates, & fixtures in or about the same. Slate quarries.

V. AND ALSO LIBERTY & power for the lessees, their agents & workmen, [to enter upon the lands afsd, &] to search for, win, work, get, raise, convert, [make merchantable & fit for sale] & carry away the [coal & other] produce of the mines & premes hby demised, but witht enterg upon the surface of any of the sd lands except the lands coloured — on the sd map, [& witht disturbg or damagg any bldgs now existg [or hrafter erected for agricultural pposes or with the consent of the lessees (d)] on the sd lands coloured —, & witht interferg with any rly, tramway, road, works, or privileges of any other lessees of coal, stone, or other mines or minls, belongg to the lessor]. Liberty to work mines (c).

VI. AND ALSO LIBERTY & power for the pposes afsd & all other pposes connected with the due & pper managemt, workg, & developmt of the sd mines & premes, to use & maintain the existg pits, shafts, rlys, tramways, roads, colliery bldgs, machy, & works, on or under the sd lands, & to deepen existg pits & to sink such pits & shafts, to drive such planes, levels, adits, sumps, waterways, & airways, to erect, construct, & maintain such engines, machy, dressg floors, bldgs, workshops, storehouses, cottages, [coke ovens, iron furnaces, brick-kilns, lime-kilns], erons & things, & to form all such rlys, tramways, & Liberty to sink pits and make works.

(c) See another form, p. 382.

(d) If the covenant extends to future buildings these restrictive words may sometimes be necessary to prevent unfairness to the lessees.

other roads & communicons, spoil heaps, & other convenices, in, over, & under the sd lands as may be necy or convenient.

Liberty to
quarry.

VII. AND ALSO LIBERTY & power to quarry & get stone, sand, gravel, & other bldg & road materials from some convenient pt or pts of the sd lands [to be selected from time to time by the lessor], & to use & employ the same for the pposes of the mines hby demised, & the works belongg thto, [but not for sale, or for the eron of dwg-houses on the sd lands, nor for the eron of bldgs of any kind on any other lands, nor for any ppose whatsr connected with other lands or the mines thereunder], witht paymt of any rent or royalty for the same.

Liberty to
dispose of
building-
stone,
gravel, &c.

VIII. AND ALSO LIBERTY & power to carry away & convert to their own use all bldg & other stone, gravel, sand, & road material, wch may be got in the course of workg the sd mines witht paymt of any rent or royalty for the same.

Liberty to
get clay
and make
bricks (a).

IX. AND ALSO LIBERTY & power to get common brick clay, sand, & other substances to be used in the manufacture of bricks on any pt of the sd lands [to be selected by the lessor], & to manufacture the same into bricks [at any such place as last afsd], & to use such bricks for the pposes of the mines hby demised, & the works belongg thto, witht paying any royalty for such as shl be used [for the pposes of the sd mines, or] for erectg, makg, or repairg any bldg, workshop, kiln, clamp, furnace, oven, or other eron or work hby [demised or] authorised to be erected or made on the sd lands, [but paying a royalty of — shillings per thousand for all bricks wch shl be taken away from the same lands].

Liberty to
use water.

X. AND ALSO LIBERTY & power (so far as the lessor can grt the same) to use & enjoy for any of the works or operons afsd, any streams, watercourses, springs, or water in or upon the sd lands, & to divert, stop or dam up any such stream or watercourse, & to make, construct, & maintain any watercourses, culverts, drains, or reservoirs, for any of the pposes afsd, [but not so as to deprive any house of a pper supply of water, or in any way to foul or pollute the water, or to interfere with the rts of any other lessees of mines or minls belongg to the lessor or of any other psons entled to the use of such water]. See *Prec. I.*, clause 4, p. 824.

(a) For another form, see lease of a brickfield, *post*, p. 837.

XI. AND ALSO LIBERTY & power for the workg of the sd mines, to use & divert all waters & watercourses within the sd lands provd that such diversion of any watercourse can be made witht prejudice to any psons other than the lessor entled to the use thof, & to make any reservoirs or any watercourses or leats for conveying the same or any other streams of water in, over, or through the sd lands for the pposes afsd.

The same, another form.

XII. AND ALSO LIBERTY & power to open a level upon the adjoining lands of the lessor [as shown on the sd plan & thrin distinguished by the colour —, & the words “proposed level:”] AND to form a rly or tramway across the same lands from the sd level to join any line of rly or tramway now existg, or wch may hrafter be made: AND ALSO to deposit spoil on the same lands [at the place distinguished on the sd plan by the colour —, & the words “proposed spoil bank:”] [Provd that the situon of the sd level, rly, tramway, & spoil bank shl be selected by the lessor or his agent].

Liberty to make a level and railway over, and deposit spoil on adjoining lands.

XIII. AND ALSO LIBERTY & power for the lessees, their agents & workmen, to work & get the [coal] & other minls from any adjoining mines now or at any time or times hrafter durg the term hby created, belongg or in lease to the lessees, & to bring the same through the mines hby demised, & the levels & workgs thof, & for that ppose to make drifts & passages by way of instroke from such adjoining mines [& also to deposit the spoil of such adjoining mines on the lands hby authorised to be used for spoil heaps of the mines hby demised] (b).

Liberty to work adjoining mines through demised mines, or instroke.

XIV. AND ALSO LIBERTY & power for the lessees to make drifts & passages through the barriers or limits of the sd demised mines & premes for the ppose of workg & gettg the [coal] & other minls thfrom by way of outstroke through any adjoining mines now or hrafter durg the term hby created belongg or in lease to the lessees (b).

Liberty to work demised mines through adjoining mines, or outstroke.

XV. AND ALSO LIBERTY & power to make such roads, tram-roads, & rlys in, through, & over the demised premes to & from the — Rly as may be necy, & to go & repass over the same, with or witht waggons, horses, or locomotive steam-engines, for

Liberty to make specified roads.

(b) See also Prec. I., clauses 8 and 36, pp. 824, 827; *Lewis v. Fothergill*, 5 Ch. 103; *Jegon v. Vivian*, 6 Ch. 742; *Whalley v. Ramage*, 10 W. R. 315.

the ppose of carrying coal & other minls from, & bringg materials to the demised premes.

Proviso as
to sites of
surface
operations.

XVI. PROVD ALWAYS THAT the sites for all spoil-banks, bldgs, workshops [quarries, clay-pits, sand-pits, chalk-pits, brick-kilns, lime-kilns, coke-ovens, iron furnaces, dressg-floors, ventilatg-shafts, railroads, tram-roads, & other communicons], & for all surface operons of the lessees shl be in every case selected by the lessor or his agent.

Lessees not
to obstruct
lessor's
mining
operations.

XVII. PROVD ALWAYS THAT in the exercise of the afsd liberties & powers the lessees shl not obstruct or retard the gettg, workg, or developmt of the minls hinafter excepted & reserved to the lessor, or of the minls in, under, or upon any other lands belongg to the lessor.

Lessees not
to do un-
necessary
damage.

XVIII. PROVD ALWAYS THAT the lessees shl, in the exercise of the powers & authorities hby grted, do as little injury or damage as can be to the lands afsd, or the timber, crops, or bldgs thron, or to the tenants or occupiers thof, & conform to the provons & restrons hinafter contd.

EXCEPTIONS AND RESERVATIONS (a).

Exception
of coal for
support
and bar-
riers, &c.

I. EXCEPT & RESERVG unto the lessor so much & such pts of the coal in the mines or veins hby demised as is or may be required for the support of any house or bldg now existg on the sd land [or wch may hrafter be erected thron for agricul-tural pposes or with the consent of the lessees (b)]: AND ALSO all the coal within a distance of — yards from each of the existg pits, & any new pit wch may hrafter be sunk to the sd mines or veins hby demised, wch last-mentd coal is to be left as a bulwark or support: AND ALSO all the coal within a distance of — yards from the boundary of the lands hby demised, wch is to be left as a barrier, & wholly undisturbed by ming operons: [AND ALSO such of the coal in the mines or veins hby demised as the lessor shl remove in sinkg to, or workg the deeper mines or veins hby reserved, or wch he or

(a) See other forms of reservations, p. 386 *et seq.*

(b) See p. 795, note (d).

they sh^l require to be left as a bulwark or support for any existg pit, or any new pit wch may hrafter be sunk to the sd deeper mines or veins].

II. EXCEPT & RESERVG unto the lessor all mines & minls in & under the sd lands other than the mines & minls hⁱⁿbfe exply demised: WITH LIBERTY & POWER for the lessor & psons authorized by him in that behalf, to search for, work, get, raise, convert, manufacture, & carry away the sd excepted or reserved mines & minls at his or their will & pleasure: AND WITH LIBERTY & POWER for the pposes afsd to sink, drive, erect, make & use all such pits, shafts, adits, water-ways, air-ways, bldgs, pumps, rlys, tramways, roads, engines, machy, spoil-banks, cinder-banks, & other convenices, upon, through, or under the sd lands as sh^l be necy, or convenient, *where water rts are of primary importce, omit the word "water-ways," & add* " & to use any springs, streams, water-courses or waters, now or hrafter existg on or under any pt of the demised lands, & to divert the same into any other pt of the sd lands by drifts, or any other means," & see *Prec. I., clause 10, p. 824.*

General
reservation
of excepted
minerals.

III. AND ALSO EXCEPT & reservg unto the lessor all such stone, sand, gravel, & other bldg or road materials as he may require for use on his este, with full power to enter upon the sd lands, & to dig, search for, work, quarry, & carry away the same.

Reserva-
tion of
stone,
gravel, &c.

IV. PROV^D ALWAYS THAT all the timber & other trees wch sh^l be felled in the exercise of the liberties & powers hⁱⁿbfe given to the lessees sh^l belong to the lessor.

Timber
felled to
belong to
lessor.

V. WITH LIBERTY & POWER for the lessor for the pposes afsd to use all rlys, tramways, & roads for the time being belonging to the lessees or used by them for workg the mines & minls h^{by} demised, or the other pposes afsd, & to cross, intersect, & join any such rlys, tramways, & roads with or to other rlys, tramways, or roads, to be made under the liberty h^{by} reserved to the lessor, & to extend or continue any such rlys, tramways, or roads as afsd, through the spoil-banks, yards, & other premes belonging to, or occupied by the lessees in cannon with the mines h^{by} demised.

Power to
lessor to
use tram-
ways, &c.

VI. PROV^D ALWAYS that if the lessor or any psons authorized by him as afsd, sh^l use any rly, tramway, or road in common with the lessees, under the reservon hⁱⁿbfe contd, the lessor

Lessor to
join in
repairing
tramways.

shl pay & contribute a just proportion of the expse of keepg the same in repair & workg order, the amt of such proportion to be settled in case of dispute by arbitron.

Liberty to enter and inspect mines (a).

VII. WITH LIBERTY & POWER for the lessor & his agents, with or witht engineers, surveyors, or other psons at all reasble times durg the term hby grted to enter upon, inspect, & examine the sd demised mines & premes, & every pt thof, for the ppose of ascertaing the condon thof, & the mner of workg, carrying on, & managing the same, & the quantity of [coal, or other] minls actually got, or for any other reasble ppose, & to take plans & measuremts of the workgs in the sd mines, & for the pposes afsd, to use, free of chge, all the shafts, pits, engines, ropes, tackle, machy, rlys, tramways, roads, works, & things now or hrafter existg on the sd demised premes, & to have all necy & reasble assistce of the miners, workmen, & others in the employmt of the lessees.

Proviso that lessor shall not obstruct lessees, and shall make compensation.

VIII. PROVD ALWAYS that the liberties & powers hinfte reserved to the lessor shl be exercised & used, so as to cause as little obstron & hindrce as possible to the lessees in the enjoymt of the powers & privileges hby grted, & that the lessor shl pay to the lessees reasble compenson for all loss or damage wch they may sustain, by reason or in consequence of such exercise or use, the amt thof to be settled in case of diffee by arbitron.

REDDENDUM (b).

Fixed or dead rent.

I. PAYING thrfor [unto the lessor] yrly durg the sd term hby grted, & so in proportion for any time less than a yr, a fixed or yrly rent of £——, payable half-yrly on the —— day of ——, & the —— day of ——, the first paymt thof to be made on the —— day of —— [in respt of wch rent the lessees may work & get durg the half-yr for wch each such half-yrly paymt is made so much —— as at the rates hinafter mentd wd produce a galeage [footage] rent of £——].

(a) Compare the covenant as to this, *infra*, p. 815.

(b) See p. 676, note (c) and p. 677, note (f).

II. AND ALSO a yrly surface-rent of £—— for every acre, & so in propon for any less quantity than an acre of the sd lands wch shl be taken or used by the lessees, for any of the works, operons, or other pposes afsd, every such surface-rent to be payable by eql half-yrly paymts on the half-yrly days afsd in every yr after the same shl become payable, & the first of such paymts to be made on such one of the same half-yrly days as shl happen next after the same shl have become payable.

Surface
rent.

III. AND ALSO a galeage-rent or royalty, to be pd on the days hinbfe mentd, of —— for every customary ton (reckong —— lbs. to the ton) of —— got or raised from or out of the sd demised —— & premes [in excess of —— tons (c)], durg the half-yr immedly precedg each such paymt.

Royalty or
galeage
rent.

IV. AND ALSO the galeage-rents or royalties follg to be pd on the days afsd, namely a galeage-rent or royalty of —— for every ton (reckong 2240 lbs. to the ton), of coal got or raised from or out of the —— seam, & a galeage-rent or royalty of —— for every ton of 2240 lbs. got or raised from or out of the —— seam durg the half-yr immedly precedg each such paymt.

Different
royalties
for dif-
ferent
seams.

V. AND ALSO the galeage-rents or royalties follg to be pd on the days afsd, namely, A galeage-rent or royalty of —— for every —— lbs. of coal got or raised from or out of the demised premes, except small coal wch will pass through a screen with meshes —— inches square, or, “the bars of wch are [one] inch apart;” AND a galeage-rent or royalty of —— for every —— lbs. of such small coal as afsd; AND a further galeage-rent or royalty of —— for every —— lbs. of coal, not being small coal, impperly sold, used, or consumed under the denominon of small coal, such last-mentd galeage-rent or royalty to be in addon to the galeage-rent or royalty first hinbfe mentd.

Different
royalties
for large
and small
coal.

VI. AND ALSO the royalties follg, to be pd on the days afsd, namely, AT ALL times durg the sd term a royalty of —— for every —— lbs. of coal got or raised from or out of the demised premes; AND ALSO if & whenever the price of coal at the pit's

Royalties
varying
according
to market
price.

(c) That is, the quantity of tons the royalties on which will amount to the fixed rent.

month shl exceed the price of — shillgs per ton, then an addonal royalty of — pence for every — lbs. of coal so got or raised for every shillg or fraction of a shillg by wch such price shl exceed — shillgs per ton.

Footage
rent.

VII. AND ALSO a rent of £—— payable half-yrly on the days afsd for every acre being one foot in thickness, & so in propon for any less quantity than an acre, & for any greater or less thickness than a foot, of all coal wch shl have been raised or got out of the — seam in the half-yr immedly precedg each such paymt.

Way-leave
rent (a).

VIII. AND ALSO a way-leave rent of — for every customary ton (reckong 2240 lbs. to the ton) of — & other minls raised or obtained from any lands not comprised in this psnt lease, *or*, “the adjoining mines known as — & — as the same are now held by the lessees,” & brought through, over, or upon the mines & premes hby demised, & the workgs thof under the liberty hinfte grted in that behalf, such way-leave rent to be payable half-yrly on the days afsd for & in respt of all — & other minls wch may be brought through, over, or upon the mines & premes hby demised, or the workgs thof, as afsd, durg the half-yr immedly precedg each such paymt.

Spoil-bank
rent,

IX. AND ALSO a rent of £——, in addon to the sd way-leave rent, for every customary ton (reckong as afsd) of spoil or rubbish produced in workg — & other minls raised or obtd from any lands not comprd in this psnt lease, *or as in last form*, & deposited on the lands comprd in this psnt lease under the liberty hinfte grted, such last-mentd rent to be payable half-yrly on the days afsd for or in respt of all spoil or rubbish deposited as afsd durg the half-yr immedly precedg each such paymt.

The same,
another
form.

X. PROVD ALWAYS that if the spoil or rubbish produced in workg — & other minls from — be deposited on the lands hby demised under the liberty hinfte grted, a rent of — for every customary ton (reckong as afsd) of all — & other minls worked as last afsd, shl be pd in addon to the sd way-leave rent, such rent to be payable half-yrly on the days afsd for or in respt of all — & other minls worked as afsd durg the half-yr immedly precedg each such paymt.

(a) See *Morgan v. Davey*, 1 Cab. & Ell. 114.

XI. RENDERG & DELIVERG on the sd premes durg the sd term unto the lessor for his own use one eql — pt of all [copper, copper ore, lead, lead ore, tin, tin ore, & all other metals, ores, & metallic minls] raised or got durg the sd term from the sd lands and premes by virtue of these psnts after the same shl have been dressed, made merchantable, [& fit for smeltg & refing], clear of all expses attendg the raisg, gettg, makg merchantable, & weighg the same [Or at the option of the lessor, PAYING in lieu of the sd reserved pts of the sd [ores, metals, or minls,] one eql — pt of all moy arisg from the sale of all such [ores, metals, & minls,] as afsd, after deductg cost of carriage to the place of sale, such cost not to exceed — per ton of — lbs. [for copper & copper ore, — per ton for lead & lead ore, & — per ton for tin and tin ore, &c.] but witht any other dedon, the respive royalties reserved in moy as last afsd to become due & payable as soon as the price of the sd [ores, metals, or minls,] in respt whof the same shl be payable, shl be reced by the lessees, but in case the same shl not be reced by them within — calr months from the sale, then at the expiron of such — calr months] the sd respive pts [or royalties hinbfe reserved] to be rendered [& delivered] half-yrly on the — day of —, & the — day of — in every yr durg the sd term or oftener, if and so often as any such [ores, metals, & minls,] as afsd shl have been raised or got & made merchantable.

Render in kind or money at lessor's option in respect of metallic minerals.

XII. PROVD ALWAYS that the lessees may, in every half-yr of the sd term, get & raise out of the sd demised mines & premes, witht paying any royalty, or, "galeage," or, "footage rent" [so much coal as at the afsd royalty, or, "galeage," or, "footage rent," wd yield a rent of £—— for such half-yr, & also] so much coal as may be actually consumed in the engines or furnaces for the time being employed or orwise consumed in workg the same mines & premes, or supplied witht chge to the manager, colliers, or labourers employed thron, *when other mines are worked by instroke through the demised mines, say,* "engines or furnaces for the time being exclusively employed or orwise consumed exclusively in the workg of the demised mines & premes," & add "But if any such engine or furnace shl be employed, or if the sd coal shl be consumed ptly in the workg of the demised mines & premes, & ptly in the workg of

Proviso as to coal which may be got without paying royalties, &c.

other mines, such a proportionate quantity only of such coal as shl be consumed in respt of coal raised from the demised mines shl be free from royalty, *or*, 'galeage,' *or*, 'footage rent.' " *And see Prec. I., clause 16, p. 825.*

Proviso as to manner of ascertaining footage rents.

XIII. PROVD ALWAYS that for the ppose of ascertaing the amt of footage rents payable under the reservon hinfte contd, coal wch shl be left for pillars, supports, barriers, or bulwarks [or wch shl be found unworkable], shl not be taken into acct, & that the acreage shl be measured along the inclinon of the seams of coal, & that the thickness shl be measured perpendicular thto, so as to obtain the true contents of the coal raised or got.

Proviso as to surface rent and compensation to tenants.

XIV. PROVD ALWAYS that the surface rent payable as afsd shl be in addon to & not in lieu of any compenson wch may be required by & shl be reasbly due to any tenant of the lands in respt of wch the same surface rent shl be payable for any damage or loss occasd to such tenant by the takg or using such lands by the lessees.

Proviso as to accidents.

XV. PROVD ALWAYS that if at any time durg the sd term the lessees shl be wholly prevented from workg the mines hby demised by fire & water, [arisg from unavoidable accident,] & if & so long as in such case they shl use their best endeavours to restore the sd mines to a condon fit for workg, & to resume & continue the pper workg thof, the sd yrly fixed or minimum rent of £—— shl cease to be payable durg such time as such impediment to the workg of the sd mines shl continue.

Strike clause.

XVI. PROVD ALWAYS that if at any time durg the sd term it shl become impossible, owing to any strike (a) or combinon of workmen, or owing to any lock-out of workmen, made with the approval of a majority for the time being of the members of the —— [coalowners' associon], to raise or get a sufft quantity of [coal] from the sd premes to continue the pper workg of the mines hby demised, then & in such case & so long as such impossibility shl continue, such pt only of the sd fixed or dead rent of £—— shl be payable as wd be payable as a galeage [footage] rent, after the rate afsd, in respt of the [coal] actually raised or got out of the premes [other than coal consumed in the engines or furnaces for the time being thron or supplied witht chge as afsd].

(a) As to strikes, see *Stephens v. Harris*, 56 L. J., Q. B. 516.

XVII. PROVD ALWAYS that, if in any yr of the sd term the lessees shl not get & raise from the sd demised mines & premes such a quantity of [coal] as at the rates afsd wd produce for that yr galeage [footage] rents or royalties equivalent to the fixed or minimum rent payable for that yr, *or*, “ ——— tons of ———,” then & in every such case the lessees may, in the next succeedg yr, [one or more of the next ——— succeedg yrs] of the sd term, but not aftwds (c), get & raise from & out of the sd mines & premes such a quantity of [coal] as shl be required to make up the deficiency in such previous yr witht paying any rent or royalty for the same other than the sd fixed or minimum rent.

Average clause (b).

LESSEES' COVENANTS.

I. THAT the lessees will durg the sd term pay, render, or deliver the sevl rents, royalties, dues, & reservons hinbfe reserved or made payable on or at the days or times, & in the mner hinbfe appted for the paymt, render or delivery thof resply, clear of all dedons whatsr (except landlord's ppty tax).

To pay rents.

II. AND WILL, *as in form* iv., p. 679, imposed upon or in respt of [the sd demised mines & premes or (d)] the coal, ores, metals, or minls got thfrom, or the proceeds of the sale thof, or the rents, royalties, or reservons hby reserved or made payable [or any land entered upon, or bldg, eron, or work erected or made under or by virtue of these psnts], or on the owners or occupiers in respt thof, the landlord's ppty tax only excepted.

To pay rates and taxes.

III. AND THAT in case the lessees shl at any time or times durg the sd term occupy or use any of the lands afsd for the ppose of the sd mines or works under the liberty in that behalf hby grted, or shl, in the exercise of any liberty or privilege

To pay compensation to tenants for surface damage.

(b) As to the importance of this clause, see *Bishop v. Goodwin*, 14 M. & W. 260.

(c) In some districts this is not restricted to a limited number of years.

(d) Where a licence only to get minerals is granted, omit the words here bracketed, and substitute the words “ by virtue of the licences hinbfe contd ” for the word “ thfrom.”

hby grted, injure or damage any of the lands afsd, or any bldgs, erons, or crops thron, or the preparons for such crops, then & in every such case the lessees will pay to the tenants & occupiers of the lands so occupied, used, or injured as afsd, pper compenson for or in respt of such occupon, use, or injury, such compenson to be determined in case of diffce by arbitron, & will indemnify the lessor from all actions, pcdgs, claims, & demands on the pt of such tenants or occupiers or any other psons in respt of such occupon, use, or injury.

To pay
lessor for
land per-
manently
injured.

IV. AND WILL in addon to the compenson payable to the tenants or occupiers of the lands so occupied, used or injured as afsd, pay to the lessor at the expiron or sooner determinon of the sd term, compenson for all permanent damage done to such lands.

To give
lessor
notice
before
entering
on land.

V. AND WILL not at any time durg the sd term enter upon any of the lands afsd for the ppose of commencg any new open-ings or other works, or fellg any timber or trees, or any other ppose, witht givg to the lessor or his agent one week's previous notice in writg, specifying the land so intd to be entered upon & the object of enterg upon the same.

To work
mines
effectually
(a).

VI. AND WILL at all times durg the sd term unless prevented by [fire or water arisg from] unavoidable accident [or by strikes or combinons of workmen or owing to any lock-out of workmen made with the approval of the majority for the time being of the members of the — [coal owners' associon]] effectually & vigorously work, develop, & carry on the sd mines, & will at all times, unless prevented as afsd, keep a sufft no. of [at least —] able miners constantly employed for such ppose.

The same.
Another
form.

VII. AND WILL throughout the sd term in the best & most effectual mner that can be devised & with a sufft no. of able workg miners & labourers & witht intermission, except when prevented by unavoidable accident or impediment or durg the exon of repairs [or by strikes, &c., *as in last form*], explore, search for, drain, & work the sd mines & minls hby demised, AND for such pposes will make, erect, & maintain in a pper course of workg & state of repair, sufft shafts, adits, levels,

(a) See *Wheatley v. Westminster Brymbo Coal Co.*, 9 Eq. 538. Such a covenant cannot safely be relied upon to take the place of a fixed rent.

outlets (b), bldgs, engines, machy, & apparatus, AND will drive in a pper & workmanlike mner all levels of every description, within the limits afsd, on the course of the seams [lodes] in or under the sd lands, & orwise carry out & exercise the liberties & powers hby grted accdg to the best & most approved modes & course of workg, AND will pperly & sufftly & in due course of ming operons work all seams [lodes] wch now are or hrafter durg the continue of this lease may be discovered within the lands afsd, & wch can be worked so as to remunerate the outlay thron, & for the ppose of ascertaing what seams [lodes] can be worked with a remunerative result will give to every seam [lode] wch promises such a result a pper & sufft trial when in the regular course of workg the same can be reached, AND will at all times actively prosecute & carry on the workgs upon each seam [lode] wch shl have been begun to be worked (except such as shl upon trial have been found incapable of being worked with a remunerative result) until the same shl be wrought & driven through to the extent of the ground comprd within the limits afsd, AND, in case of any dispute or diffce arisg as to the propriety or sufficiency of the trial of any seam [lode] or the probability of workg the same with a remunerative result or the sufficiency of the no. of men employed upon any seam [lode] or work or the sufficiency or efficiency in other respts of the workg or in anywise in relon thto, the mre in diffce shl be reld to arbitron.

VIII. AND WILL not at any time durg the sd term, unless prevented, &c., *as in form VI. or VII.*, discontinue the effectual workg of the sd mines or any of them for the space of — weeks in the whole in any one yr or for any consecutive period exceedg — weeks.

Not to dis-
continue
working.

IX. AND WILL durg each half-yr endg on the — day of — & — day of — of the sd term or until the whole of the sd seam of coal [mines & minls hby demised] shl have been worked out [unless prevented, &c., *as in form VI. or VII.* get such a quantity of [coal] from the sd mines, as, accdg to the galeage [footage] rent or royalty hinbfe reserved, will produce a clear half-yrly rent of £—, *the minimum rent.*

To get
enough
coal to
produce
minimum
rent.

(b) As to coal mines, see 50 & 51 Vict. c. 58, ss. 16, 17, 18.

To carry
on special
works.

X. AND FURTHER (& so that this covt shl not be deemed in any way to restrict or limit the genl covts hinfte contd resptg the workg of the sd mines) will forthwith commence & carry on the followg works & operons with the object of efficiently & vigorously explorg & workg the —— seam [lode] (that is to say) the —— level [adit] shl be driven eastward at the rate of —— fathoms at the least in every yr by —— able miners at the least, or such greater no. as may be requisite, until the same shl be wrought or driven through the ground compd in the limits afsd, & that such other drivages & works in addon to those hinfte specially mentd, shl be from time to time carried on as shl be necy or pper for efficiently developg & workg the —— seam [lode]. *And see Prec I., clause 28, p. 826.*

To work
mines
properly.

XI. AND WILL at all times durg the sd term search for, win, work, & develop the mines [seams of coal], & premes hby demised in a pper, skilful, & effectual mner, & accdg to the best & most approved practice of searchg for, winng, workg, & developg similar mines & minls [whether the same be] adopted or in use in the district [or not] [& in complice with the provons of the Coal Mines Regulon Act, 1887], & with as little damage as possible to the surface of the sd lands, & to the messes & bldgs, & other erons, & the timber & crops thron [& also with as little damage & interference as possible to & with the workg of the other mines & minls [seams of coal] lying & being under the lands afsd, but not comprd in this demise], & so as to work & raise the largest possible quantity of [coal] witht causg any damage or injury to the mines [seams of coal] hby demised.

Not to
injure
mines.

XII. AND WILL not at any time commit or suffer within the mines & premes hby demised [or in any other mines connected or worked thrwith] any wilful or negligent act whby the mines hby demised [or any other mines or minls lying & being under the lands afsd, but not comprd in this demise], may be damaged by or overchg'd with water or foul air, or whby the workg of any such mines or minls may be impeded or prevented, [or wch may occasion or bring any creep, crush, or thrust upon the levels, air-courses, water-courses, or works of the sd mines, or any pt thof].

To protect
mines from
encroach-
ment.

XIII. AND WILL at all times employ all reasble care & dilige to protect the mines & minls hby demised [& all other mines

& minls, or "seams of coal," lying & being under the lands afsd, but not comprd in this demise] from being injured, encroached or trespassed upon, or surreptitiously worked, & in the event of any such injury, encroachment, trespass, or surreptitious workg, will take such measurements as will show the extent of the same & enable the lessor to recover compenson for any loss occasd thby.

XIV. AND WILL at all times durg the sd term keep in good & pper repair, order, & condon all the levels, adits, drifts, shafts, pillars, bulwarks, pits, engines, machy, pumps, water-courses, air-courses, bldgs, sheds, workshops, erons, rlys, tramways, roads, & other works & convenices belonging to the sd mines hby demised or used in cannon thrwith, except any works or things wch may become unnecy for the further workg of the sd mines [& wch may not be necy or useful for the workg of other mines & minls lying & being under the lands afsd, but not comprd in this demise], & the same, in such good & pper repair, order, & condon, will deliver up to the lessor, at the end or sooner determinon of the sd term [or at the time when the same shl become unnecy for the workg of the sd mines hby demised] (a).

To keep works in repair, and deliver up at end of term.

XV. AND THAT in case the lessor, or his agent, shl at any time durg the sd term give or leave on the sd demised premes a notice in writg to the lessees, to exte or do any such repairs or works as ought to be exted or done by virtue of the covts hinbfe contd, & the lessees shl neglect or omit to exte & do the same within the period of three calr months from the date of such notice, the lessor shl be at liberty to enter upon the mines & works hby demised, & to exte & do the necy repairs & works, & the lessees shl repay the expses of such repairs to the lessor, on demand, & in default of paymt the amt so expended shl be recoverable by distress (b) or orwise, in like mner as if the same had formed pt of the rents hby reserved.

That the lessor may repair on default of lessees.

XVI. AND WILL at all times durg the sd term, at their own expse, make & maintain sufft fences for the proton of man & beast round every pit shaft & open pt of any adit or other

To fence pits (c).

(a) See also p. 817, form L.

(b) See p. 744, note.

(c) See as to quarries, 50 & 51 Vict. c. 19; and as to coal mines, 50 & 51 Vict. c. 58, ss. 37, 49 (rules 6—18); and as to other mines, 35 & 36 Vict. c. 77, s. 23 (rules 6, 7).

work already sunk or dug, or wch hrafter shl be sunk or dug, within the limits afd.

To fence pits and railways, &c. (a).

XVII. AND WILL, from time to time, & at all times durg the term hby grted, pperly & securely fence off, & keep fenced off from the adjoining lands by means of a substantial stone wall [post & rail fence] at least — feet in height, or some other sufft fence, all the pits, shafts, rlys, tramways, & works of the lessees, used in common with the mines hby demised: [AND whenever any such rlys or tramways shl be made through existg hedges, banks, walls, or fences, will make & maintain pper gates across the rly or tramway at such openings: AND WILL at the expiron, or sooner determinon of the sd term, at the option of the lessor, eir leave such gates in good repair & condon, or block up the openings so made with a pper hedge, bank, wall, or fence, so as to correspond with the adjoining hedge, bank, wall, or fence (b).]

To fill in or fence useless shafts (c).

XVIII. AND WILL, whenever any pit or shaft shl become unnecy or useless, eir fill up the same with earth or rubbish, or surround the same with a good & substantial wall of — inch brickwork or masonry, at least six feet in height, or cover the same with a good & substantial arch, constructed to the satisfon of the lessor or his agent, unless he shl signify his desire that the same shl be left open, in wch case the same shl be left open accdly, togr with all air-courses, water-courses, passages & other works & convenices belongg thto in good & serviceable condon.

Not to make unnecessary shafts and to secure shafts (c).

XIX. AND WILL not open or make any unnecy adits, pits, or shafts on the sd lands, & will durg the sd term well & sufftly bind, support, maintain & secure with timber or other good & sufft materials all shafts, tunnels, adits, drifts, & workgs that may be made or used in the sd lands, & the same so bound, supported, or secd at the end or sooner determinon of the sd term will quietly yield up to the lessor.

(a) See as to quarries, 50 & 51 Vict. c. 19; and as to coal mines, 50 & 51 Vict. c. 58. ss. 37, 49 (rules 6—18); and as to other mines, 35 & 36 Vict. c. 77, s. 23 (rules 6, 7).

(b) The words between brackets will be omitted when the railway itself is to be fenced.

(c) See as to coal mines, 50 & 51 Vict. c. 58, s. 17; and as to other mines 35 & 36 Vict. c. 77, s. 23 (rule 8).

xx. AND WILL not interrupt or interfere with any existg road, rly, tramway or other communicon, or with the natural course of any stream or water-course save as hby expressly authorised : AND will not throw any spoil, rubbish, or refuse into any stream flowg through the lands afsd.

Not to interfere with roads or streams.

xxi. AND WILL forthwith or as soon as required by the lessor or his agent [upon or within a suitable pce or pces of land to be from time to time, as occasion shl require, set apt & appropriated for this ppose by the lessor or his agent], dig & construct for the interception, reception, & purifying & cleansg of the minl water comg from the dressg-floors, or any of them, bfe such water shl fall or be permitted to flow (directly or indirectly) into the river — or other natural channels of drainage, a sufft no. of pits of sufft dimensions, & of such constron in all respts, as shl be pperly adapted for purifying & cleasng the sd minl water, & in case of any further measures being required for that ppose will take & carry out such further & other necy & reasble measures as may be required for the efficient purificon & cleansg of the sd minl water bfe the same is permitted to flow into the sd river or other natural channels of drainage, the no. & dimensions of such pits, & the choice in other respts of the pper means for that ppose, & any incidental question in relon thto, in case of dispute, to be settled by arbitron.

To make slime pits for purifying mineral water.

xxii. AND WILL return all water wch shl have been taken or intercepted from the river — for workg the water or pumpg wheels, or for any of the other pposes of the sd mines & works, to the same river, or deliver the same for the use of the lessor or the lessees of other mines belongg to him, at such point or points on the lands afsd, & at such level as may be reasbly prescribed in that behalf by the lessor or his agent.

To return water taken from river.

xxiii. AND WILL not do or suffer any act or thing whby any stream, spring, or other water wch shl or may be used for workg any mill or machine shl or may be in any mner lessened or injuriously affected.

Not to take water required for mills.

xxiv. AND WILL erect & keep pper gates & fences for protectg the tenants & occupiers for the time being of the sd lands from any trespass on the pt of the workmen & other psons employed in the sd mines : AND will take such reasble means for stoppg any such trespass as may be required by the lessor or his

To prevent trespassing of workmen.

agent, & (if so required) will discharge from their employment any workman or person committing such trespass.

To prevent poaching.

xxv. AND WILL discharge any workman or other person employed in the said mines who shall [keep a dog, or] poach, disturb, take, or kill the game or rabbits (a) on any land belonging to the lessor.

Not to work near buildings, &c.

xxvi. AND WILL not at any time do or permit any damage or injury to any house, building, or other erection, or garden now existing, [or any building hereafter erected for agricultural purposes, or with the consent of the lessees (b),] on the land aforesaid [or any reservoir on the said lands], or do or suffer any act or thing whatever which may in any wise tend to the injury or prejudice of the owner, tenant or occupier thereof: AND (in order effectually to avoid such damage or injury) will not allow any workings to be carried within — feet of the surface under any such house, building, erection, garden [or reservoir], as aforesaid, nor within a lateral distance of — feet therefrom on any side thereof: AND if any damage or injury shall be occasioned to any house, building, erection, garden [or reservoir], by any breach of this covenant, then & in such case will pay to the lessor & his tenants full compensation for such damage or injury [& for all consequential damage caused by the escape of the water from any such reservoir], the amount of such compensation in case of difference to be settled by arbitration: AND will keep the lessor indemnified against all actions, proceedings, claims, & demands in respect of any damage or injury.

To work at sufficient depth beneath river, &c.

xxvii. AND WILL not work any ground beneath the river — within a distance of — yards from the bed thereof, nor beneath the lands coloured — in the said plan within a distance of — yards from the surface.

Not to place spoil banks near houses.

xxviii. AND WILL not place or allow any spoil banks or other rubbish or refuse to be deposited or laid, or any dressing-floors to be made, except at a reasonable & sufficient distance from any house or garden.

To leave barriers at boundary of land.

xxix. AND WILL not work any of the said mines or minerals lying within the distance of — fathoms measured inwards in a horizontal straight line from the limits of the lands aforesaid, to

(a) See the Ground Game Act, 1890, if the land is demised.

(b) See p. 795, note.

the intent that the sd mines & minls lying within the distce afsd shl be left as barriers & wholly undisturbed by any mining operons.

xxx. AND WILL not cover with ores or rubbish or orwise waste any meat earth, mould, or soil within the lands afsd, but will as far as circes will admit preserve & lay aside the same in heaps on some convenient pt of such lands for the use of the lessor or the occupiers for the time being thof.

To preserve
surface
mould.

xxxI. AND WILL place at the entrance to each adit, pit, or workg, or in some other convenient place or places upon the lands afsd, to be approved of by the lessor or his agent, one or more good & pperly constructed weighg machine or machines, AND will cause to be weighed thrin all [coal & other minls] raised or got under or by virtue of these pnts [& also all [coal & other minls] brought from any adjoining mines through, on, or over the mines & premes hby demised under the liberty in that behalf hinfte grted], AND will cause the weights & quantities so ascertained to be forthwith duly registered at the weighg house or houses, AND will also at the close of each day cause the total quantity of the [coal & other minls] weighed as afsd durg the day to be entd in pper books of acct to be kept for that ppose at the countg-house of the sd colliery [mines] in such mner that all [coal & other minl] subjt to galeage, or, "footage," [or way-leave] rents or royalties or in respt whof any exemption is claimed shl be clearly distinguished & shown.

To weigh
minerals
(c).

xxxII. AND WILL permit the lessor, his agents & servants, at all reasble times durg the term to inspect & test the accuracy of the weighg machine or machines to be kept as afsd, & the weights used thrin.

That lessor
may inspect
weighing
machines.

xxxIII. AND WILL permit the lessor to employ a pson to be psnt at the weighg of all [coal & other minls] weighed as afsd, & to keep an acct thof & to check the accts kept by the lessees.

That
lessor's
agent may
be present
at weigh-
ing.

xxxIV. AND WILL not employ as weigher any pson who shl be objected to by the lessor, or his agent, for any reasble cause, & if any dispute shl arise as to the reasbleness of such objon the same shl be refd to arbitron.

That lessor
may object
to weigher.

(c) As to coal mines, see 50 & 51 Vict. c. 58, ss. 12—15.

To give
notice to
lessor of
time of
weighing
minerals.

XXXV. AND WILL give twenty-four hours' notice in manner aforesaid to the lessor, or his agent, of the time of the weighing [or divon] of the copper, copper ore, tin, tin ore, lead, lead ore, & other metals, ores, & metallic minls raised or got by virtue of these pants.

To deliver
account of
ores sold.

XXXVI. AND WILL within two days after the delivery or consignmt of any ores, metals, or minls to or on acct of any pchaser or pchasers thof deliver to the lessor, or his agent, a just acct in writg of the ores, metals, or minls so delivered or consigned with sufft parlars as to price, time of paymt, & orwise.

To keep
accounts
(a).

XXXVII. AND WILL at all times keep at the countg-house or office of the sd mines accurate & regular accts containg full entries of all [coal] & other minls raised or got by virtue of these pants [& made marketable & of the sales thof] & of the times of the removal of the same from the premes togr with all such parlars of weights, quantities, dates, [sales,] & other facts & circes as may be necy or pper, AND WILL if required verify such accts by the statutory declaron of their clerk or book-keeper & also of the lessees themselves, so far as their knowledge extends.

To deliver
accounts
half-yearly.

XXXVIII. AND WILL on each of the half-yrly days hinfte appted for paymt of rents & royalties deliver to the lessor, or his agent, a true acct showg the total amt of [coal & other minls] raised or got durg the precedg half-yr by virtue of these psnts, & distinguishg the amt of [coal & other minls] subjt to galeage, or, "footage," rents or royalties from the amt in respt of wch any exemption is claimed [& the parlars of all sales thof] [& also an acct of all [coal & other minls] brought from any adjoining mines through or over the mines & premes hby demised under the liberty in that behalf hinfte grted] AND WILL if required verify such accts, &c., as in precedg form.

To keep
plans of
mines (b).

XXXIX. AND WILL at all times durg the sd term keep [& will, on each of the half-yrly days hinfte appted for paymt of rents & royalties, deliver to the lessor, or his agent] true & correct plans & sections of the mines hby demised & all the workgs thof, [& of any mines worked through or the minls from wch

(a) As to coal mines, see 50 & 51 Vict. c. 58, s. 33.

(b) As to coal mines, see 50 & 51 Vict. c. 58, ss. 34, 38. As to other mines, see 35 & 36 Vict. c. 77, s. 19.

are brought through, under, or over the mines & premes hby demised] [& of all seams, veins, or loads wch shl have been discovered thrin], upon wch the extent, posson, & actual condon of the works shl at least once in every half-yr be accurately set forth & delineated; such plans & sections to be made to the scale of one in — on the horizontal or ground plane, & of one in — in the vertical plane, [& to be kept at the countg-house of the sd mines].

XL. AND WILL permit the lessor, or his agents, at all reasble times to have access to & inspect & take copies of or extracts from the books of acct, plans & sections, to be kept as afsd.

To allow lessor to inspect accounts and plans.

XLI. AND WILL on the — day of — in every yr durg the sd term, or within — days thrafter, deliver to the lessor, or his agent a full & true list of the names of all the psons employed in workg the sd mines, specifying the names of the miners or labourers who durg the yr next precedg such — day of — shl have been employed in workg or drivg each seam or lode.

To deliver lists of workmen.

XLII. AND WILL make & maintain distinct & well-secd marks in the roof, side, or other convenient pt of every level or headway wch shl cross the boundary of the mines & premes hby demised into or out of any adjoining mines & workgs so as to enable the lessor or his agent, at all times to determine the accuracy of the surveys kept by the lessees, & of the return of minls based thron.

To mark boundaries of mines.

XLIII. AND THAT the lessor, or his agents, servants, & workmen shl be at liberty at all reasble times durg the sd term to enter into & upon, & to inspect the mines hby demised, & the works belonging thto, & any adjoining mines or workgs carried on or worked in cannon thwith, & to make surveys & plans thof, & aftwds to return thfrom witht any hindrce or interruption, & shl for such pposes be at liberty to use the machy & plant employed in or about the sd mines & works, & shl be effectually assisted by the agents, workmen, & servants of the lessees.

To allow lessor to inspect workings (c).

XLIV. AND WILL make & keep in repair pper bridges & passages for the safe & convenient passage of the occupiers for the time being of the sd lands, & other psons, & their cattle, carts,

To make bridges, &c., for convenience of occupiers.

(c) See also p. 768, form XXII., and p. 800, form VII.

& carriages, over any watercourse, or open pit of any adit or adits, or other works, wch shl be made or erected by the lessees, within the lands afd : AND WILL keep open the roads & paths over & across the sd land, & provide pper & convenient means of passage where the workgs shl interfere with the roads or paths now existg.

To deliver coal to lessor for his own use.

XLV. AND WILL in each week durg the sd term supply the lessor with — tons of — coal, to be delivered at —, at a price not exceeding £— per ton, such coal to be free from rent or royalty.

To deliver stone and gravel, &c., to lessor.

XLVI. AND WILL from time to time, upon the lessor or his agent givg one calr month's notice in writg for that ppose, deliver to the lessor or his agent, free of chge, at the time specified in such notice, & at some place used by the lessees for the deposit of stone, sand, gravel, or road materials, such quantities of stone, sand, & gravel, in a merchantable condon, & of other materials for the makg, maintaing, & repairing of roads, or for use for any other pposes whatsr on the este of the lessor, as shl from time to time be so required, & shl permit such stone, sand, gravel, & road materials to be taken & carried away by the psons employed by the lessor, & give pper facilities for enablg them so to do : PROV'D ALWAYS that subj't to the reservon of the lessor of such stone, sand, gravel, or road materials as he may require as afd, & subj't to the lessees duly observg the covt lastly hinbfe contd, the lessees shl be at liberty to make merchantable & dispose of all other stone, sand, gravel, & road materials got by them in the course of their sd workgs witht renderg any acct or paying any dues in respt thof.

Not to obstruct lessor in working excepted minerals.

XLVII. AND WILL exercise the rts, licences, & privileges hby grted in such a mner as to offer no unnecy or reasbly avoidable obstron or interruption to the developmt & workg by the lessor of the mines & minls hby excepted & reserved, or the transport, convce, or conversion of the produce thof, or to the use & enjoymt of any other rt hby reserved to the lessor.

Not to cause damage.

XLVIII. AND WILL, in using & exercisg the licences & powers hby grted, commit no trespass, & do as little damage & injury as reasbly may be to the lessor, or his tenants, & to the surface & freehd of the sd lands.

Not to allow unauthorised

XLIX. AND WILL not at any time durg the sd term authorise or suffer any pson other than the lessees, or their agents, work-

men, or servants, to use any way-leave, drift, level, instroke, outstroke, water-way, or other communicon from, through, over, or under the lands afsd, or used or occupied in connon with the sd mines. persons to use way-leaves, &c.

L. AND WILL, at the expiron or sooner determinon of the sd term, deliver up to the lessor the sd demised premes with all — except such fixtures & things as tenants are by law entled to remove, & wch the lessor shl not under the provon in that behalf hinafter contd require to be left, in such good & sufft state of repair as afsd, & in all respts in such state & condon as shl be consistent with the due pformce of the sevl covts on the pt of the lessees hrin contd, & in pper order for the future workg & prosecon of the mines & works hby demised. To deliver up at end of term.

LI. AND WILL at all times durg the sd term in the workg of the sd mines, strictly conform to & observe all the regulons & requiremts contd in or imposed under the authority of the Coal Mines Regulon Act, 1887 [the Metalliferous Mines Regulon Act, 1872], or any other act or acts for the time being in force affectg the premes, & keep the lessor effectually indemnified agst all penalties, damages, costs, & expses occasd by any breach by the lessees, or any pson or psons employed in the sd mines, of any such regulons or requiremts. To observe Act regula-ting mines.

LESSOR'S COVENANTS.

I. THAT the lessees paying & renderg the sevl rents, royalties, & dues hby reserved & made payable, & observg & performg all the covts, stipulons, & condons hrin contd, & on their pt to be observed & pformed, shl quietly hold & enjoy the mines, minls, liberties, licences, lands (a), & premes hby demised (a) & grted for & durg the term hby grted witht any interruption from or by the lessor or any pson rtfully claimg under or in trust for him [*or*, under the sd indre of settlemt of the — day of —, *or*, “the sd will of the sd —.”] For quiet enjoyment

(a) If licences only are granted without any demise of the lands omit the words “lands” and “demised &.”

To renew
(a).

II. THAT if the lessees sh^l be desirous of takg a new lease of the mines & premes hby demised after the expiron of the sd term of — yrs hby grted, & sh^l at least six calr months bfe the expiron thof signify such their desire by a notice in writg to be delivered to the lessor or his agent, or left at the last known place of abode of the lessor in England, the lessor & all other necy pties, if any, will at or bfe the expiron of the sd term, at the costs & chges of the lessees, make & exte to them a new & effectual lease of all & singr the sd mines & premes hby grted or demised for a term of — yrs, to commce from & after the expiron of the term hby grted, at & under the like rents, royalties, & dues, & with & subj^t to the like covts & provons as are hrin contd, except this psnt covt for renewal.

PROVISOES.

Power of
re-entry
(b).

I. PROVD ALWAYS, &c., that if the sd rents, royalties, & dues hby reserved or made payable, or any of them or any pt thof resp^{ly} sh^l at any time be in arrear or unpd for three calr months (c) after the same resp^{ly} sh^l be payable, whether the same sh^l have been legally or formally demanded or not, or, “ & demand for the same sh^l have been made at the countg-house or office of the sd mines by the lessor or his agent,” or if the lessees sh^l make default in pformg or observg any of the covts, provons, or condons hrin contd, & on their pt to be pformed & observed [or if the lessees, while the sd demised premes or any pt thof sh^l remain vested in them, sh^l become

(a) See p. 697, note (c).

Relief
against
forfeiture.

(b) The power of the court under the Conv. Act, 1881, s. 14, as amended by the Conv. Act, 1892, to relieve against a condition of re-entry in a lease extends to mining leases and grants of licences for mining purposes (see definition in s. 2); but with an exception of covenants against assigning or underletting, &c., and conditions of forfeiture on bankruptcy, &c. (see the definition in s. 2), or an execution against the lessee, and covenants to allow the lessor to inspect the books, weighing machines, &c., and the mines, see sub-sec. 6, which is not affected as to mining leases by s. 2, sub-sec. (2) of the Act of 1892, see sub-sec. (3) (b) of that Act.

(c) In a lease under the Settled Land Act, 1882, this must not exceed 30 days, see s. 7 (3).

subjt to the bkptcy laws, or shl enter into any arrangemt or composon with or for the benefit of their credors eir under the provons of any bkptcy act for the time being in force or orwise, or suffer an exon to be levied agst their goods or ppty, or if their assns being a Co shl enter into liquidon whether compulsory or voluntary] then & in any such case it shl be lful for the lessor, although he may not have taken advantage of some previous default of a like nature, to re-enter upon the sd demised mines, lands, & premes, or any pt thof in the name of the whole (d) : & thrupon this psnt lease or grt & the liberties, licences, & powers hinfte grted, & every clause & thing hrin contd shl absolutely cease, determine, & become void, but witht prejudice to any rt of action or remedy wch shl have accrued to the lessor [eir pty] in respt of any breach of any of the covts or provons hrin contd.

II. PROVD ALWAYS, &c., that if the lessees shl sink a shaft or bore to the depth of — from the surface of the sd lands, witht findg a seam of coal of the thickness of — at the least, it shl be lful for them, at any time [within — calr months] thrafter, to determine this demise by givg — calr months' notice in writg to the lessor or his agent, & upon the expiron of such notice, & provd the lessees shl upon such expiron [or within — days thrafter] render & pay all rents, dues, & royalties, compenson for damage, & other moys wch may be then due & payable under these psnts to the lessor or his tenants, & shl deliver up these psnts to the lessor or his agent, then this psnt lease or grt, & the liberties, &c., *as in last form.*

Power to lessees to determine lease if coal lies too deep.

III. PROVD ALWAYS, &c., that, if by reason of any fault in the coal-measures the sd seams of coal [any seams of coal, of the thickness of — at least, found by the lessees] shl be thrown down under the sd lands to a greater depth than —, it shl be lful for the lessees to abandon & not to work such pt of the same seams as shl lie beyond such fault, & they shl not be bound to prove the extent of such fault.

Power to abandon working in case of a fault.

(d) If licences only are granted, without any demise of the lands, say, in lieu of "to re-enter, &c.," "by any instrumt under his hand & seal duly notified to the lessees to determine the sevl liberties, licences, and powers hinfte grted to the lessees."

Variation for licences.

Power to
surrender
if coal is
of bad
quality or
exhausted
(a).

IV. PROVD ALWAYS, &c., that if it shl appear, after a full & sufft trial & exploron, that the coal hby demised is of a bad, soft, or unmarketable quality, or if all the coal wch havg regard to the condons & circes in wch similar seams are wrought in the district, may fairly be deemed to be workable with profitable results, shl be found to be exhausted, then, & in any such case the lessees may determine this demise at the end of any yr of the term hby grted by givg in the event of the first mentd contingency twelve calr months', & in the event of the exhaustion of the coal, six calr months' notice in writg to the lessor or his agent, & upon the expiron of such notice, &c., *as in form II.*: Provd that the sufficiency of any such trial & exploron, & the fact whether such exhaustion of coal as afd has occurred, shl in case of dispute be submitted to arbitron.

The same,
if working
is unsuc-
cessful.

V. PROVD ALWAYS, &c., that in case the lessees shl be unsuccessful in explorg & workg the mines & lodes within the lands afd it shl be lful for them to determine the sd term hby grted, previous to the expiron thof, on givg — calr months' notice in writg of such desire to the lessor or his agent, & at the expiron of such notice, &c., *as in form II.*

Power to
lessees to
remove
engines,
&c.

VI. PROVD ALWAYS, &c., that it shl be lful for the lessees (havg first pd & dischgd the sevl rents, royalties, & sums of moy payable by them by virtue of these psnts, & havg observed & pformed all the covts & condons hinfte contd), at the expiron or sooner determinon of the sd term, or within — calr months thrafter [unless the same shl be determined under the power of re-entry hinfte contd, & in that case at any time not less than fourteen days nor more than — calr months after such determinon], to take down & remove for their own benefit all [fixed &] moveable engines, machy, plant, &c., *here insert appropriate words*, used or employed in or about the sd mines & works [wch the lessor shl not have elected to pchase under the provon hinafter contd] (except landlord's fixtures) makg reasble compenson for all damage done to the sd lands & premes by such removal.

Power to
lessor to
purchase

VII. PROVD ALWAYS, &c., that if at the expiron or sooner determinon of the sd term the lessor shl desire to pchase all or

(a) As to the importance of this clause, see *Bute v. Thompson*, 13 M. & W. 487; *Ridgway v. Sneyd*, Kay, 627.

any of the [fixed or] moveable engines, machy, plant, &c., engines, &c., at expiration of term. *here insert appropriate words*, & other articles & things used or employed in or about the carrying on & workg of the mines & works hby demised, & shl signify such desire by a notice in writg, signed by him or his agent, & given to the lessees, or left at the countg-house of the sd mines, one calr month at least bfe the expiron or sooner determinon of the sd term, unless the same shl be determined under the power of re-entry hinbfe contd, in wch case the notice may be given or left as afsd at any time within fourteen days after the determinon of the sd term, then & in such case the articles & things specified in such notice shl not be removed by the lessees, but shl be pchased by the lessor, at a price to be determined in case of dispute by arbitron. *See Prec. II.*, p. 830.

VIII. PROVD ALWAYS, &c., that if & so often as any pt of the rents, royalties, or dues hby reserved or made payable [to the lessor] shl be in arrear for twenty-one days, whether the same shl have been legally demanded or not, the lessor may enter into & upon any of the mines, lands, works & premes hby demised (c) [or any adjoining mines, lands, or works wch shl for the time being be held or occupied by the lessees in cannon with the sd mines & premes (d)], & may seize & distrain all [coal] & other minls actually gotten, & all fixed or moveable engines, machy, rails, trams, plant, horses, cattle, implemts, utensils, & things belonging to the lessees, within, under, or upon any of the sd mines & premes

(b) Although mining leases are excepted out of s. 6 of the Bills of Sale Act, 1878 (enacting that an attornment clause or power of distress given as security for a debt is to be deemed to be a bill of sale), there is no such exception in s. 4, under which "a licence to take possession of personal chattels as security for any debt," is to be so deemed. Whatever the effect of the exception of mining leases in s. 6 may be, it is not clear that the power of distress in the text (although for rent), is not within s. 4, having regard to *Pulbrook v. Ashby*, 56 L. J. Q. B. 376, 35 W. R. 779 (see above, p. 744, note), so as to be invalidated by the Act of 1882, so far as it goes beyond the Common Law power. In this uncertainty as to the law it is thought better to retain the clause, which is of frequent occurrence in mining leases.

(c) If the lease is in the form of licences only, in lieu of "hby demised," say "wch shl for the time being be held or occupied by the lessees, under the liberties or licences hby grted."

(d) See as to this power of distress when the lease has been assigned, *Daniel v. Stepney*, L. R. 9 Ex. 185.

so demised [held or occupied] as afsd, & may sell & dispose of the same for & towards the satisfon & paymt of all such arrears of rent, royalties, or dues, & also of all expses incidental to, or occasd by such distress or distresses in like mner as landlords may distrain on goods by law distrainable for rent reserved by common demises.

Addition to
power of
distress.

IX. AND IN CASE any such distress shl not produce an amt of moy sufft to cover the amt so in arrear & the expses afsd, may stop all works & operons wch may be carried on in or upon the sd demised premes, until the rent, wch shl then remain due, & all expses occasd by non-paymt thof, shl be satisfied: PROVD ALWAYS that the express powers of entry & distress hinfte contd shl be in addon to & not in lieu of any power of distress to wch the lessor may be by law entled for recovery of the rents hby reserved.

Provision
as to no-
tices (a).

X. AND IT IS HBY AGRD that every notice hby required or authorised to be given to the lessor shl be in writg, & may be eir given to him psonally, or left at his usual or last known place of abode in the United Kingdom, or may be given to his agent, or such other pson, & in such mner as the lessor may from time to time direct; & every notice hby required or authorised to be given to the lessees shl be in writg, & may be eir given to them or any of them psonally, or to the ppal manager or captain of the sd mines or works, or may be left at the usual or last known place of abode in the United Kingdom of the lessees, or any of them, or at the office or countg-house of the sd mines or works.

The same.
Short form
referring to
the Conv.
Act, 1881.

XI. AND IT IS HBY AGRD that any notice hby required or authorised to be given to the lessor or lessees respdy, shl be in writg, & may be given or served in any of the modes provd by the 67th section of the Conveg & Law of Ppty Act, 1881, with respt to notices to be given to lessors or lessees (as the case may be) under that Act.

Addition to
arbitration
clause (b).

XII. PROVD ALWAYS that the clause lastly hinfte contd shl

(a) See *Hogg v. Brooks*, 14 Q. B. D. 475. Where the lessor is a company, the notice may be given to the secretary or left at the registered office of the company; where the lessees are a company, the notice may be given in like manner or in any of the other modes mentioned in the text which are applicable.

(b) For arbitration clause, see above, p. 704.

not in any manner abridge any of the rights or powers hereinbefore given to the lessor or his agent or enable any matter to be submitted to arbitration, which, under the provisions hereinbefore contained, would be subject to the absolute control of the lessor or his agent, or as to which the right to go to arbitration is hereinbefore excluded.

PRECEDENTS.

I.

AGREEMENT *for* LEASE of a COAL MINE (c).

PREC. I.

AGREEMENT made this — day of —, BETWEEN A., of, &c. Parties.
(hereinafter called the lessor), of the one part, & B., of, &c., & C.,
of, &c. (hereinafter called the lessees), of the other part.

1. [IN CONSIDERATION of the sum of £—— to be paid to the lessor Agreement
by the lessees] the lessor shall grant & the lessees shall take a for lease.
lease & execute a counterpart thereof, OF THE unworked coal in the Parcels.
—— seam of coal & all the seams of coal existing below the said
—— seam of coal lying within & under the lands situate,
&c., & called, &c., & estimated to contain —— acres or
thereabouts particularly described in the schedule hereto & coloured ——
in the plan hereunto annexed, TOGETHER WITH all the existing plant
& machinery (in the nature of landlord's fixtures) attached to the
colliery.

2. THE LESSEES, their agents & workmen, shall have power Power to
for the purpose of winning, working, manufacturing, & carrying lessees to
away the minerals hereby agreed to be demised to enter upon that enter.
part of the surface of the said lands which is coloured —— upon
the said plan but not upon any other portion thereof without the
written consent of the lessor or his agent.

THE LESSEES shall have the following powers over the lands Lessees'
coloured —— on the said plan [so far as the lessor has the powers.
power to grant the same under a lease dated, &c., & made, &c.,
under which he holds the said premises].

(c) See p. 712, note; and see the Coal Mines Regulation Act, 1887.

- PRMO. 1.**
—
To deposit rubbish and use water.
3. *Liberty to make works, p. 795.*
4. LIBERTY to deposit rubbish produced in workg & manufacturg the demised minls, & to make watercourses & ponds & to divert & use the flowg water (so far as the lessor can authorise the same), but the rt to make watercourses & ponds is grted subjt to the embankmts & puddlg being made pperly to the satisfon of the lessor or his agent, & kept in repair to prevent the water from overflowg, percolatg, or orwise injurg the adjacent lands.
- To take building stone and make bricks.**
5. LIBERTY to take bldg stone from such pt of the sd land as shl be approved in writg by the lessor or his agent, & to erect brick-works & to manufacture fireclay into bricks [such stone & bricks to be used exclusively on the sd demised premes].
- To build houses.**
6. LIBERTY to erect upon the land coloured — dwellg-houses for workmen or agents accdg to plans & on sites to be approved in writg by the lessor or his agent.
- Way-leave.**
7. A RT of way to carry minls from the adjoining mines over or under any pt of the demised premes or over any pt of the surface of the lands coloured — on the sd plan.
- Liberty of instroke and out-stroke.**
8. LIBERTY OF instroke & outstroke into & from the demised mines & premes from & to any adjoining mines for carrying minls from such adjoining mines through the demised mines & premes as afsd, or for workg the demised mines from such adjoining mines, but so that no instroke or outstroke drift made through the barriers to be left in the boundaries of the demised mines shl exceed — in width, & no drift shl be nearer than — yards to any other drift.
- Powers to be subject to existing rights.**
9. THE POWERS afsd over the surface are to be grtd subjt to any rts or powers wch may have been previously acquired by any existg lessees or other psons under any existg leases or agrmts.
- Reserva-tion of minerals to lessor.**
10. THERE SHL be reserved to the lessor all minls & substces not hby specifically agrd to be demised, with full powers of winng, workg, manufacturg, & carrying away such excepted minls & substces, & for that ppose to use the lessees' pits, rlwys, tramways, & roads, paying reasble compenson for the use of the same, the amt thof in case of diffe to be settled by arbitron.
- Reserva-**
11. ALSO POWER to the lessor & his tenants to pass with or

witht horses, cattle, carts, & carriages over & along all or any of the roads now existg or to be made by the lessees on the sd demised premes.

PREC. I.
—
tion of
right of
way.
Reserva-
tion of
right to
resume
lands.

12. ALSO POWER to the lessor to take & use from time to time for any ppose, witht makg compenson, any portion or portions of the lands coloured —— on the sd plan wch shl not have been appropriated by the lessees as hby authorised.

13. THE TERM shl be —— yrs from the —— day of ——.

Term.

14. THE CERTN rent shl be £——, for wch sum the lessees may work such quantities of minls as at the royalties after mentd will be eql to the same, & the term “short workgs” hinafter contd means workgs short of such quantities, & the term “excess” or “surplus workgs” means workgs in excess of such quantities.

Rent.

15. THE ROYALTIES shl be as follows:—

Royalties.

- Large coal —— per ton.
- Small coal —— „
- Ironstone —— „
- Fireclay —— „
- Bldg stone —— per yard.

The ton to consist of —— pounds & all coal to be considered & taken as large coal wch will not on being screened pass through a screen of bars wch are [one] inch apt or wch shl be sold unscreened.

16. No ROYALTY shl be pd for coal actually consumed by pumpg, windg, & ventilatg engines, ventilatg furnaces, & pit fires used for workg the demised minls, provd the quantity consumed does not exceed —— p. c. of the total amt raised from the demised premes.

No royalty
for coal
consumed.

17. No ROYALTY shl be pd for bldg stone or fireclay made into bricks wch shl resply be used upon the premes.

No royalty
for stone
or bricks
used.

18. A WAY-LEAVE rent of —— per ton shl be pd for minls conveyed from adjoining ppties over or under the demised premes or over the surface of the lands coloured —— on the sd plan.

Way-leave
rent.

19. THE LESSEES shl pay at the rate of —— per acre by way of rent for any quantity up to —— acres of the surface lands wch shl be taken, & at the rate of —— per acre for all such lands taken in excess of —— acres, & shl pay for crops, plantations, & timber upon any land taken at the time of takg

Surface
rent and
compensa-
tion to
tenants.

PREO. I. —	posson thof; AND shl also pay all compenson payable to the tenants, & at the end or other sooner determinon of the lease shl make compenson for all permanent damage to the surface.
Rent for land taken for houses.	20. THE LESSEES shl pay at the rate of — per acre by way of rent for such pts of the surface-land coloured — on the sd plan as shl be taken for the ppose of erectg dwellg-houses thron.
Time for payment of rents and royalties.	21. THE SD rents & royalties shl be payable half-yrly on the — day of — & the — day of —.
Liberty to make up short workings.	22. THE LESSEES shl be at liberty to make up the short workgs of any yr out of the excess of any of the next succeedg — yrs only, but the surplus workgs of any past yr shl in no case be taken to make up the short workgs of any sub-seqt yr.
No merger of way-leave rent.	23. WAY-LEAVE RENT shl not merge in the certn rent.
Lessees' covenants.	THE LEASE or leases shl contain the follg covts by the lessees in the terms now usually inserted in leases of similar ppty in the coy of —, that is to say :
To pay rent.	24. To PAY rents & royalties.
To pay rates.	25. To PAY rates & taxes.
To give notice before taking land.	26. NOT to take any of the surface-land coloured — on the sd plan witht givg one month's notice to the lessor or his agent, each notice to be accompanied by a plan upon wch the land proposed to be taken shl be shewn.
To fence.	27. To FENCE off all land on takg posson.
To sink pits.	28. To COMMENCE sinking from the surface — pits to the — seam within — calr months from the commencement of the term on the land coloured — on the sd plan, one pit to be not less than — feet in diameter in the clear & the other not less than — feet in diameter in the clear, in such situon as may be approved of by the lessor or his agent, & such sinkg to be pursued with pper diligce & dispatch & uninterruptedly & with at least — able workmen constantly employed except in case of strikes or genl lockouts or unavoidable accidents.
To supply plans of explorations.	29. To SUPPLY to the lessor or his agent from time to time when required, accurate sections of the strata wch may be passed through in sinkg the pits to be sunk on the demised premes, & to supply parlars of all their explorons.

30. Not to erect or use any steam engine, coke-oven, brick-kiln, or any work or machine whatever, in wch coal or coke shl be burned or any kind of fire used, within fifty yards of the fence of any land from time to time taken posson of, & all land taken to be forthwith cleared & aftwds kept cleared of the underwood, gorse, & long grass, with a view to avoid risk of fire to the adjoining lands, & to pay for injury occasd by fire or orwise to any land, & the crops & plantations thron, wch shl not have been taken by the lessees as hby authorised.
31. To ERECT weighg machines, & to weigh the minls got, & to allow the lessor's agent to be psnt at the weighg.
32. To KEEP separate accts of the workgs from each of the seams, & to supply copies thof to the lessor or his agent.
33. To KEEP plans to a scale of — chains to an inch.
34. Not to assn or underlet wtht the consent of the lessor.
35. To LEAVE barriers if required by the lessor or his agent of — yards in width in each of the demised seams adjoining the outside boundary of the demised premes.
36. To STOP up effectually every instroke or outstroke drift at the end or other sooner determinon of the term if required by pper frame dams or orwise to the satisfon of the lessor or his agent.
37. To KEEP the works in repair.
38. To DELIVER up the works & mines in good repair & workg order & pperly drained & ventilated to the satisfon of the lessor or his agent at the end or other sooner determinon of the sd term.
39. Not to work under or within — yards of any bldgs now built or hinafter to be built [for agricultural pposes or with the consent of the lessees] upon the demised premes.
40. To WORK the mines pperly & accdg to the most approved method of workg for the time being in use in the coy of —; & to observe the Coal Mines Regulon Act, 1887, or any statutory modificon thof for the time being in force.
41. Not WILFULLY to do anything to injure the mines.
42. Not to allow any water to accumulate in the workgs of any of the demised seams, & in the event of any water so accumulatg, to exte when required such works as may be necy to remove such accumulons, so as to prevent the loss of any coal wch ought fairly to be worked.

PREC. I.

Not to
light fires
near boun-
dary, and
to pay for
damage by
fire.

To weigh
minerals.

To keep
and deliver
accounts of
workings.

To keep
plans.

Not to
assign.

To leave
barriers.

To stop
instroke
and out-
stroke
drifts.

To repair.

To deliver
up.

Not to
work under
buildings.

To work
mines
properly.

Not to in-
jure mines.

Not to
allow water
to accumu-
late.

PREC. 1. — To supply lessor with coal (a).	43. To SUPPLY the lessor or his agent, from & after the winning of the coal, with one ton of large coal per week free of cost at the pit's mouth, the same not to be chargeable with royalty.
Lessees' powers.	THE LEASE or leases sh ^l contain the follg powers to the lessees in the terms now usually inserted in leases of similar ppty in the coy of — :
To surren- der if un- successful.	44. To SURRENDER the demised premes if the workg is unsuccessful.
To remove plant on determi- nation.	45. To REMOVE the plant at the end or other sooner determinon of the sd term if the lessor sh ^l not elect to pchase the same.
Lessor's powers.	THE LEASE or leases sh ^l contain the follg powers to the lessor in the terms now usually inserted in leases of similar ppty in the coy of —.
To re- enter.	46. To RE-ENTER if any rent or royalty is in arrear for — days, or on breach of any of the covts, or if the lessees or their assns sh ^l , while the sd demised premes or any pt thof sh ^l remain vested in them, become bkpt or enter into any arrangemt or composon with their credors, or being a Co, sh ^l enter into liquidon whether compulsory or voluntary.
To dis- train (b).	[47. To SUSPEND the works & to distrain upon the engines, plant, & stock in hand, if any of the rents or royalties are in arrear for — days.]
To pur- chase plant.	48. To PCHASE the lessees' plant at a valun on givg to them six calr months' notice bfe the expiron or other sooner determinon of the term, or in the event of the same being determined by re-entry then on givg such notice within fourteen days thrafter.
To enter during last year of term.	49. To ENTER upon the premes durg the last yr of the lessees' occupon for the ppose of doing any act necy or useful for the future workg of the mines.
To examine.	50. To EXAMINE the mines & premes at all times.
To weigh.	51. To WEIGH the minls & to examine & copy the lessees' plans & accts.
To have assistance.	52. For THE pposes afsd or any of them to have the assistce

(a) Qu. whether this subjects the lease to extra stamp duty under the Act of 1891, s. 76.

(b) See p. 821, note.

of miners, workmen, & others in the employmt of the lessees, & the use of the machy & plant free of chge.

PREC. I.

53. THE LESSOR shl covt in the usual way for the lessees' quiet enjoymt.

Lessor to covenant for quiet enjoyment.

54. THE LEASE or leases shl contain the usual arbitron clause, & such other clauses in addon to those hinbfe mentd, & not being inconsistent thrwith, as are now usually inserted in leases of similar ppty in the coy of —.

Lease to contain arbitration clause.

55. THE LEASE or leases & counterpt of each lease shl be prepared by the solor of the lessor at the expse of the lessees, & the lessees shl pay all expses attendg this agrmt..

Preparation of lease and costs.

56. UNTIL THE lease or leases shl have been grted, the lessor shl have the same powers & remedies by distress (c) & orwise in case of non-paymt of rent & royalties, & all other powers & rts as if the lease or leases had been exted.

Lessor's powers before grant of lease.

57. THE LESSOR's title shl not be inquired into.

Lessor's title not to be inquired into.

58. ANY QUESTION arisg out of this agrmt shl be settled by arbitron in the usual mner.

Arbitration.

59. *Add any other clauses from the forms given above wch may be appropriate.* IN WITS, &c.

[Schdle of Pcels.]

II.

LEASE of IRON and METALLIC MINE in DEVONSHIRE EFFECTED by GRANT of LICENCES ONLY.

PREC. II.

PARTIES, A. (hinafter called the lessor, wch expression, &c., see p. 670), 1; B. & C. (hinafter called the lessees, wch expression, &c.), 2. WITNETH that in conson of the rents & reservons hinafter reserved, & of the covts & agrmts by the lessees hinafter contd, the lessor doth hby grt & demise unto the lessees, *exclusive liberty to get*, "iron, iron ore, umber, & other ores, metals, & minls," p. 794; *to make works*, p. 795; *to use water*, p. 796: AND THE iron, iron ore, umber, & all other

Witnesseth.

Demise.

Parcels.

<p>PREC. II. ——</p>	<p>ores, metals, & minls to be found & gotten by virtue of these psnts to take, raise, make merchantable, carry away, & dispose of at their will & pleasure, To hold the sd licences, powers & authorities hby grted Unto the lessees from the —— day of ——, for the term of —— yrs, <i>Reserron of fixed rent</i>, p. 800, <i>witht the words in brackets</i>; also a <i>yrly royalty</i>, “for every ton of twenty-one cwt. of iron, iron ore, or umber,” p. 801, AND ALSO renderg & deliverg on the sd premes one —— pt or share of all such tin, tin ore, copper, copper ore, lead, lead ore, & all other metals & minls, except iron, iron ore, & umber, raised or got, <i>continue form for render in kind or moy at lessor’s option</i>, p. 803: <i>average clause</i>, p. 805: <i>Covts by lessees</i> “for themselves and their assns,” to <i>pay the rents & royalties</i>, p. 805; to <i>pay rates & taxes</i>, p. 805; to <i>weigh minls</i>, p. 813; to <i>allow lessor to inspect weighg-machines</i>, p. 813; to <i>allow lessor’s agent to be psnt at the weighg</i>, p. 813; <i>not to make any unnecy shafts</i>, p. 810; to <i>fence pits</i>, p. 809; <i>not to work near bldgs, &c.</i>, p. 812; to <i>allow lessor to inspect</i>, “all or any adits, shafts, or works, wch shl be driven, sunk, made, or used within the sd lands,” p. 815; to <i>preserve surface mould</i>, p. 813; <i>not to cause damage</i>, p. 816: <i>Power to lessor to pchase engines at end of term</i>, p. 820. AND IN case the lessor shl not elect to take such engines, machy, apparatus, materials, & effects at a valun as afsd, then that the lessees will not remove the same, or any pt thof, from the sd lands until all the shafts wch shl have been opened or made by the lessees shl have been filled in, or pperly covered or secd, & all rents, royalties, dues, & compenson then due from them shl have been pd accdg to the covts hinble contd, after wch the lessees shl be at liberty durg —— calr months thrafter to remove the same: <i>Power of re-entry</i>, p. 818; [<i>power of distress</i>, p. 821]; <i>covt by lessor for quiet enjoymt</i>, p. 817; <i>arbitron clause</i>, p. 704, <i>with the addon at p. 822</i>. Add any other clauses from the above forms wch may be appropriate IN WITS, &c.</p>
<p>Haben- dum. To lessees. Reserva- tion of rent. Render in kind.</p>	
<p>Lessees’ covenants.</p>	
<p>Not to remove plant before filling up pits, &c.</p>	

III.

LEASE of SLATE QUARRIES in WALES (a).

PREC. III.

PARTIES, A., *lessor*, hinafter, &c., see p. 670, 1; B. & C., *lessees*, hinafter, &c., 2: *WITNETH*, *conson*, *demise* of "ALL THOSE pces of land situate, &c., & also" *the slate quarries*, p. 795, *TOGR* WITH full power, licence, & authority, to open, dig, sink, search for, work, raise, & get all slate or slate-rocks of every kind in, from, or out of the lands & hds afsd, & for that ppose to remove & take away any surface soil, & to dig, sink, & drive any new pits, shafts, soughs, levels, trenches, dams, embankmts, drains, & watercourses in or about the sd quarries or works: AND to have, use, alter, & divert the pits, shafts, soughs, levels, trenches, dams, embankmts, drains, & watercourses now existg, or hrafter to be opened, or made, in, under or upon the sd lands & hds, or any pt thof: AND to make new, & to use, stop up, alter, & divert the psnt & any new tramways & other roads, inclined planes, levels, drifts, & works in or upon the sd lands & hds, or any pt thof: AND to make, build, & erect upon any pt of the sd lands & hds any engines, machines, wheels, pumps, mills, & bldgs whatsr: AND to alter & pull down any house or bldg now standg, or hrafter to be erected on the sd lands [witht any liability or obligon to rebuild the same], for the better or more effectually gettg, dressg, makg merchantable, & carrying away such slate as afsd, or for workg or carrying on any works or quarries hby authorised to be made or worked: AND WITH full rt to cut & make drains, gutters, pits, & trenches for keepg & conveying water for such engines, machines, wheels, pumps, mills, & other necy uses in & about the sd works or quarries: AND ALSO to dig & get, in, upon, or out of the sd lands & hds, such stone, clay, & other materials, as may be necy or requisite for makg, repairg, & maintaing any works, bldgs, tramways, waterways, or other things now existg, or hrafter erected, or made in cannon with the sd quarries: [WITH free rt of passage for the lessees, their servants, agents, & workmen, with horses, carts, carriages, or orwise in, upon, & over all roads, ways, levels,

Demise.

Liberty to quarry.

To dig pits, &c.

To divert shafts, &c.

Alter roads, &c.

Put up machinery.

Pull down houses.

Make drains.

Get stone and clay.

Right of way.

(a) As to fencing, see 50 & 51 Vict. c. 19.

PREC. III.	& drifts for the time being upon or under any other lands of the lessor not hinfte demised, for carrying away the sd slates, & for carrying & bringing any materials & things whatsr to or from the sd quarries.] <i>Reservon to lessor of liberty to enter & inspect works, substitutg "quarries" for "mines,"</i>
Habendum.	p. 800: To HOLD, use, exercise, & enjoy the sd lands, hds, slate-rocks, quarries, works, powers, & premes hinfte demised & grted, subjt to the respive estes & intts of the sevl tenants of the same lands & hds, Unto the lessees from the — day of — for the term of twenty-one yrs: <i>Reservon of certn rent,</i> p. 800; & <i>royalty</i> "of — for every ton (consistg of —lbs.) of slate (except rough flags), of a size exceedg 100 superficial inches, wch shl be got & made durg the sd term," p. 801: AND ALSO PAYING thrfor durg the sd term a royalty of — for every ton (to be calculated as afsd) of rough flags & lintels & slate of a size not exceedg 100 superficial inches, wch shl be got & made durg the sd term: PROVD ALWAYS, & it is hby agrd & decld that the qtrly paymt of £—, made on any qtr day in respt of the sd certn yrly rent of £—, shl be taken in pt paymt, so far as the same shl extend, of the sd royalties of — & — per ton, accrued due in the qtr wch shl immedly precede such qtrly day. <i>Average clause,</i> p. 805. <i>Corts by lessees</i> "for themselves & their assns" <i>to pay rents & royalties,</i> p. 805; <i>to pay rates,</i> p. 805: AND WILL keep true & pper books of acct of all slates, slate-rocks, slate-flags & blocks, wch shl be gotten & made in the sd works, & will fairly & openly weigh all such slates, slate-rocks, slate-flags, & blocks, as shl be sent for shipment or transit by rly or orwise off the sd lands & hds, & keep the sd books of acct at the office or countg-house of the sd works: AND WILL permit the lessor & his agents at all reasble times durg the first fourteen days of every qtr of a yr of the sd term to inspect such books of acct & parlars: AND ALSO that the lessees will psonally, or by their agents or managers, whenever required, verify the accuracy of the sd books of acct & parlars: AND ALSO will at all times durg the sd term use & work in every respt the sd lands, rocks, quarries, & beds of slate, & make, manufacture, & work all the slate of every description raised or got out of the sd quarries of pper sorts, sizes, thicknesses, & dimensions in every respt accdg to the best & most improved method for the time being in use in
To lessees.	
Reserva- tion of rent.	
Royalty for large slates.	
Royalty for small slates.	
Certain rent to be in part payment of royalties.	
Lessees' covenants.	
To keep accounts, &c.,	
and permit lessor to inspect them,	
and verify them.	
To work quarries properly.	

the district of carrying on & workg slate quarries, & makg & manufacturg slates: AND WILL effectually prosecute & continue such works, & keep the sd quarries free & clear from all rubbish: AND WILL remove the rubbish, waste, & surface-soil from time to time, & deposit the same in some convenient & reasble pt of the sd demised premes, wch the lessor, or his agent, shl approve for that ppose, so as such deposit shl not injure the sd quarries, or impede the future workg thof; *to keep works in repair, & deliver up at end of term*, p. 809; *to allow lessor to enter & inspect*, "the sd rocks, quarries, & beds of slate & works," p. 815; *to make compenson for surface damage*, p. 805; *power of re-entry*, p. 818; [*power of distress over* "all slates, slate-rocks, blocks, flags, machy, engines, implemts, plant, horses, carts, live & dead stock, and all other effects whatsr then & there found, whether such engines, machy, or other effects may be affixed to the sd lands or not," p. 821.] *Cort by lessor for quiet enjoymt*, p. 817. *Arbitron clause*, p. 704, *with the addon at p. 822. Add any other clauses from the above forms wch may be appropriate.* IN WITS, &c.

PREC. III.

To prosecute works.

To remove rubbish.

Power of distress.

IV.

LEASE of a COAL MINE, the CLAUSES being placed in SCHEDULES.

PREC. IV.

PARTIES, A., *lessor* (hinafter called the lessor, wch expression shl hinafter & in the schdle hto, &c., *see* p. 670), 1; B. & C., *lessees* (hinafter, &c.), 2. WITNETH that in conson of the rents & royalties hinafter reserved & the covts on the pt of the lessees & condons hinafter contd, the lessor doth hby grt & demise unto the lessees, ALL THOSE mines, beds, veins, & seams of coal & fireclay, liberties, licences, & privileges mentd & descd in the first pt of the schdle hrunder written, EXCEPT & RESERVING unto the lessor, as in the second pt of the sd schdle is mentd, To HOLD the premes hby grted & demised UNTO the lessees, from the — day of — for the term of — yrs, Paying thrfor the sevl rents & royalties mentd & specified in the third pt of the sd schdle, SUBJT to the provons relatg to the

Witnesseth.

Demise. Parcels.

Reservations.

Haben-dum.

Rents.

Provisions as to rents.

PREC. IV. sd rents & royalties expd in the fourth pt of the sd schdle:
 Lessees' *Covts by the lessees with the lessor*, p. 679, as in the fifth pt of
 covenants. the sd schdle is expd. *Covt by the lessor with the lessees*, p. 694,
 Lessor's as in the sixth pt of the sd schdle is expd: AND IT IS HBY AGRD
 covenants. & decld in mner expd in the seventh pt of the sd schdle: AND
 Provisoes. IT IS HBY ALSO AGRD & decld that the sd schdle hrunder written
 Proviso shl be deemed to be pt of these psnts & be read & construed
 that sche- accdly. IN WITS, &c.
 dule shall
 be read as
 part of
 lease.
 Schedule. The schdle refd to in the above written indre (a).

The first pt.

Parcels. *Pcels*, p. 794; *liberty to work mines*, p. 795; *to sink pits & make works*, p. 795; *with provo as to surface operons slightly altered*, p. 798; [*if necy, liberty of instroke & outstroke*, p. 797; *to quarry*, p. 796; *to use water*, p. 796;] *lessees not to obstruct lessor's ming operons*, p. 798; *or to do unnecy damage*, p. 798.

The second pt.

Reserva- So MUCH & such pts of the sd mines, beds, veins, & seams
 tions. hby demised as is or are required for the support of any house or bldg now on the demised lands, or, "on the lands hinbfe descd & distinguished by a ——— colour on the sd map:" & also excepted minls with liberties for workg the same, p. 799; *to use tramways*, p. 799; *lessor to join in repairing tramways*, p. 799; *liberty to lessor to enter & inspect mines*, p. 800; *provo that the lessor shl not hinder the lessees*, p. 800.

The third pt.

Rents. *Fixed rent, with the words in brackets*, p. 800; *surface rent*, p. 801; *galeage rents per ton of coal & fireclay*, p. 801: [*way-leave rent*, p. 802; *spoil bank rent*, p. 802.]

The fourth pt.

Provisions ALL THE afsd rents shl be pd free from any dedon except
 as to rents. landlord's ppty tax: *Provo that a certn quantity of coal may be got witht paying royalty*, p. 803; *provo as to accidents*, p. 804; *strike clause*, p. 804; *average clause*, p. 805.

(a) It will be convenient to paragraph the clauses in the Schedule.

The fifth pt.

PREC. IV.

To pay rents, p. 805 ; to pay rates & taxes, p. 805 ; to pay compenson for surface damage, p. 805 ; to work mines effectually, p. 806 ; not to discontinue workg, p. 807 ; to sink pits, p. 826 ; or, to exte other special works, see p. 808 ; to protect mines from encroachmt, p. 808 ; to fence pits, p. 809 ; to fill in or fence use-less shafts, p. 810 ; not to interfere with roads or streams, p. 811 ; not to work near bldgs, p. 812 ; to weigh coals, &c., p. 813 ; with, if thought necy, the subsidiary clauses, forms XXXII., XXXIII., XXXIV., XXXV. ; to keep plans of mines, p. 814 ; to deliver accts half-yrly, p. 814 ; inspon of accts by lessor, p. 815 ; to mark boundaries of mine, p. 815 ; to allow lessor to inspect workgs, p. 815 ; not to obstruct lessor in workg excepted minls, p. 816 ; [not to allow unauthorised psons to use way-leaves, p. 816 ; not to assn, p. 691 ; with the provo ;] to keep works in repair & deliver up at end of term, p. 809 ; to observe the Coal Mines Regulon Act, 1887, p. 817.

Lessee's
covenants.

The sixth pt.

For quiet enjoymt, p. 817.

Lessor's
covenants.

The seventh pt.

Power of re-entry, p. 818 ; [power of distress, p. 821] ; [power to lessees to determine lease, if coal lies too deep, p. 819 ; or if coal is of bad quality or exhausted, p. 820] Power to lessor to pchase engines at expiron of term, p. 820 ; arbitron clause, p. 704 ; with the addon, p. 822 ; provon as to notices, p. 822 ; add any other clauses from the above forms wch may be appropriate.

Provisoes.

V.

LEASES of SERPENTINE ROCK in CORNWALL (b).

PREC. V.

PARTIES, A. (hinafter called the lessor, &c., see p. 670), 1 ; B. & C. (hinafter called the lessees, &c.), 2 : WITNETH that in conson of the rents & royalties hinafter reserved & the covts

Wit-
nesseth.

(b) See the Quarries Act, 1894. As to fencing, see 50 & 51 Vict. c. 19.

PRINC. V.	on the pt of the lessees hinafter contd, the lessor doth hby grt
Demise.	& demise unto the lessees, <i>liberty to get</i> , "all the steatite, soap-
Liberties.	stone, porphyry, granite, marble, olivine, asbestos, & diallage
	stone & rock," p. 795, <i>liberty to make & construct</i> , "adits,
	shafts, pits, & a jetty, pier, quay, or breakwater, sheds, houses,
Reserva-	engines, & other bldgs, tramways, & roads," p. 796: EXCEPTG
tion of	& RESERVG unto the lessor all timber, trees, wood, & under-
timber and	wood, & all copper, copper ore, lead, lead ore, tin, tin ore, &
minerals,	all other metals, minls, & stone whatsr, other than the sd
	stone & rock hinfte demised: AND EXCEPTG & RESERVG all
and	quarries of slate, & pits & veins of clay & marl whatsr, with
quarries.	liberty for the lessor, &c., p. 799, <i>form II.</i> ; <i>to use tramways,</i>
	<i>&c.</i> , p. 799; <i>lessor to join in repairing tramways</i> , p. 799; <i>liberty</i>
	<i>for lessor to enter & inspect mines</i> , p. 800: <i>Provo that lessor shl</i>
	<i>not hinder lessees</i> , p. 800; <i>Habendum</i> , p. 676; <i>Reservcon of</i>
	<i>fixed rent</i> , p. 800; <i>royalty</i> , p. 801. <i>Covts by lessees</i> , "for
	themselves & their assns," <i>to pay rents</i> , p. 805; <i>to pay rates</i> ,
	p. 805; <i>not to discontinue workg</i> , p. 807; <i>to pay compenson for</i>
	<i>surface damage</i> , p. 805; <i>to keep works in repair</i> , p. 809; <i>to</i>
	<i>fence pits</i> , p. 809; <i>not to interfere with roads or streams</i> , p.
To preserve	811; AND ALSO will lay aside for the use of the lessor, all meat
meat earth.	earth & soil wch shl be dug by the lessees, & will not within
	twelve months aftwds, lay any stones or rubbish thron; <i>to keep</i>
	<i>accts</i> , p. 814; <i>deliver accts half-yrly</i> , p. 814; <i>to allow lessor to</i>
	<i>inspect accts</i> , p. 815; & <i>to inspect workgs</i> , p. 815; <i>not to</i>
To allow	<i>obstruct lessor in workg excepted minls</i> , p. 816. AND FURTHER
lessor to	that if the lessees shl erect a jetty, pier, quay, or breakwater,
use jetty.	by virtue of the liberty or licence hinfte contd, they shl allow
	the lessor & his tenants to use the same for all pposes wch shl
	not interfere with the works of or with the user of the same
	by the lessees, upon such terms as to the paymt for or mode
	of enjoymt of the same as shl be agrd upon by the lessor &
	lessees, or in default of agrmt shl be determined by arbitron;
	<i>to deliver up at end of term</i> , p. 817; <i>power of re-entry</i> , p. 818;
	[<i>power of distress</i> , p. 821]. <i>Covt by lessor for quiet enjoymt</i> ,
	p. 817; <i>arbitron clause</i> , p. 704, <i>with the addon</i> , p. 822: <i>add</i>
	<i>any other clauses from the above forms wch may be appropriate.</i>
	IN WITS, &c.

VI.

LEASE of a BRICKFIELD.

PREC. VI.

PARTIES, A., *lessor*, hereinafter, &c., see p. 670, 1; B. & C., *lessees*, hereinafter, &c., 2. WITNEETH that in conson of the rents, royalties, covts, & condons hereinafter reserved & contd, & by the lessees to be pd, pformed, & observed, the lessor doth hby grt & demise unto the lessees, ALL THOSE pces of land situate, &c., AND ALSO liberty to get clay, brick earth, & sand, & other materials to be used in the manufacture of bricks [or tiles] from the sd lands, & to manufacture the same into bricks [or tiles] on any pt (a) of the sd land, & to sell & dispose of the bricks [or tiles] so manufactured, *liberty to use water*, p. 796, AND ALSO liberty to erect, construct, & maintain such engines, machy, kilns, clamps, ovens, workshops, bldgs [cottages], erons, & things, & to form such roads, communicons, ash heaps, spoil banks, & other convenices on & over the sd lands as may be necy or convenient. [*Genl reservon of mines & minls*, "other than the clay, brick earth, sand, & other substes hby demised," p. 799]; *liberty to lessor to enter & inspect works*, p. 800, *form VII.*, saying, "the sd demised premes," & "the quantity of clay, brick earth, & sand actually got, & the no. of bricks [& tiles] in course of manufacture or ready for sale," & *omittg the clause beginng* "for the pposes afsd," To HOLD, use, & enjoy the sd premes hby grted & demised UNTO the lessees from the — day of —, for the term of 21 yrs, *Reservon of dead rent*, p. 800, *form I.*, saying, "may manufacture durg the half-yr, &c., — bricks [& — tiles]." AND also a royalty to be pd on the days hinfte mentd of — for every thousand bricks manufactured on the demised premes in excess of — thousand durg the half-yr immedly precedg such paymt, & of — for every thousand tiles manufactured, &c., PROVd always that no royalty shl be pd in respt of any bricks or tiles used in the eron, constron, or mtce of any of the kilns, clamps, ovens, workshops, bldgs, cottages, erons, water-courses, culverts, drains, or things hby

Wit-
nesseth.

Demise.

Haben-
dum.
Redden-
dum.

Proviso.

(a) If the brickfield is near buildings some restrictions as to the position of clamps, kilns, and ash heaps may be required. The nature of the tiles, whether roofing or draining tiles, and the dimensions, must be stated.

PREG. VI.	authorised (a). <i>Corts by the lessees</i> "for themselves & their
Lessees' covenants.	assns," to pay rent & royalties, p. 805 ; to pay rates & taxes, p. 805, saying "the demised premes or the clay, brick earth, sand, & other materials got thfrom, or the proceeds, &c., to fence "the demised premes," p. 809, to prevent poachg, p. 812, [not to place clamps, &c., except in certn places, p. 812, form XXVIII, <i>mutatis mutandis</i> (b)]. AND ALSO that the lessees will lay aside & preserve the two topmost spits of soil from any pt of the premes where they may dig clay or sand, & will as soon as the clay, brick earth, or sand shl have been taken replace the sd two spits of soil & restore the surface so as to be fit for agricultural pposes, AND WILL not carry away from the demised premes any clay, brick earth, sand, or other substces obtd under the liberties afsd, but will manufacture the same on the demised premes & not elsewhere into bricks [or tiles], And will at all times keep at the office on the demised premes accurate accts showg the no. of bricks [& tiles] manufactured on the demised premes, & of the sales thof, & of the terms, &c., continue to keep accts, p. 814, <i>mutatis mutandis</i> , to allow the lessor to inspect accts, p. 815, <i>mutatis mutandis</i> . AND also that the lessor & his agents shl be at liberty at all times durg the sd term to enter upon & inspect the demised premes ; AND ALSO will durg the sd term indemnify & keep indemnified the lessor agst all actions, claims, damages, & expses wch may be instituted or occasd in respt of the storage of ashes or other materials, or the manufacture of bricks [or tiles] on the demised premes or any annoyance or damage wch may be thby occasd to the neighbourhood. To deliver up at end of term, saying, "with all kilns, clamps, erons, & bldgs," <i>Power of re-entry</i> , p. 818. [<i>Power of distress</i> , p. 821, saying, "all clay, brick earth, sand, & other materials actually gotten, & all bricks [& tiles] partially or completely manufactured, & all
Clamps, &c.	
To preserve surface soil.	
Not to carry away clay, &c.	
To keep accounts.	
To allow inspection by lessor.	
To indemnify lessor against actions, &c.	

(a) Sometimes an *average clause*, see p. 805, is inserted ; but it appears to be inappropriate. If it is inserted a *cort to work effectually*, p. 806, *mutatis mutandis*, should be inserted.

(b) It may be desirable to provide (i.) that the clay shall be worked from, say, E. to W. ; (ii.) that the full depth shall be worked before new ground is broken ; (iii.) that it shall be worked in accordance with sections and levels annexed to the lease, or to be fixed from time to time by the landlord or his agent.

fixed, &c."]. *Covt by the lessor for quiet enjoymt*, p. 817; *Power to lessees to remove*, "all bricks [& tiles] completely manufactured & being on the sd premes," p. 820, *form vi.*, *mutatis mutandis*. **PROVD THAT** if the lessees shl at any time be restrained by legal pcdgs from makg or burng bricks upon the land hby demised or any pt thof or shl be mulcted in damages for such makg or burng, then & in eir of the sd cases the lessees may give notice in writg to the lessor to forthwith determine this lease, & the same shl be determined accdly subjt to the paymt of all rents & royalties, & the pformce & observce of all the covts hrin contd, & by the lessees to be pformed or observed up to the time of such determinon: *arbitron clause*, p. 704, *with the addon*, p. 822. **IN WITS**, &c.

PREC. VI.

Power to
determine
lease.

VII.

AGREEMENT *for* YEARLY TENANCY of a BRICKFIELD. *A short form (c).*

PREC. VII.

PARTIES, A., hinafter, &c., *see* p. 670, 1; B. & C., hinafter, &c., 2.

1. **THE LESSOR** hby demises to the lessees as yrly tenants from the — day of —, **ALL THAT** field, situate, &c., **WITH** liberty to the lessees to get clay & sand thfrom, & to manufacture the same into bricks on any pt of the premes, & to erect such kilns, [clamps], sheds, or huts, as may be necy for such ppose.

Demise.

Parcels.

Right to
get clay
and make
bricks.

2. **THE RENT** shl be a certn rent of £—, payable half-yrly on the — day of —, & — day of —, & a royalty of — per 1000 bricks to be pd on the days afsd on all bricks made on the premes durg the half-yr precedg each such paymt.

Reserva-
tion of
rent.

3. *Lessees not to discontinue workg*, *see* p. 807.

4. **THE LESSEES** shl at their own expse keep the road from the sd field to the turnpike road from — to — in repair & good condon.

Lessees
to repair
road.

PREC. VII. 5. *To preserve surface mould, & not to carry away clay or sand, as in last precedent, p. 838.*

6. EIR PTY may determine this agrmt by givg one calr month's notice in writg to the other, expirg on the — day of — in any yr.

7. IF THIS agrmt shl be determined by the lessor by notice expirg bfe the — day of —, he shl pay for all kilns [clamps], sheds, & huts erected by the lessees on the sd field at a valun made by two psons, one to be appted by each pty, or an umpire in the usual mner, but in the event of the determinon of this agrmt in any other mner, the sd kilns [clamps], sheds, & huts shl belong to the lessor witht his makg any paymt for the same.

8. *Power of re-entry, p. 818, saying, "may re-enter upon the premes, & put an end, &c." As WITS, &c.*

VIII.

PREC. VIII. AGREEMENT *for letting from YEAR to YEAR a QUARRY of BUILDING and ROAD STONE. A short form (a).*

Parties. AGRMT made, &c., BETN A. (hinafter, &c., see p. 670), 1; B. (hinafter, &c.), 2.

Licence to quarry. 1. IT SHL be lful for the lessee to enter upon the — farm, situate, &c., & to quarry stone from the quarry now open thron or from any fresh pits wch he may open adjacent thto, from the — day of — from yr to yr till this licence is determined, At the royalties follg, namely — per yard for all road stone & — per yard for all bldg stone removed from the sd land.

Royalties to be calculated and paid quarterly. 2. THE AMTS of the royalties due shl be calculated up to each of the usual qtr days, & shl be pd within one calr month after the same.

Power of distress (b). [3. THE LESSOR shl have a rt of distress for the royalties upon all the stone wch shl for the time being remain on the sd land & upon the lessee's plant.]

(a) See p. 835, note.

(b) See p. 821, nota.

4. No new pit shl be opened witht the lessor's written consent. PREC. VIII.

5. THE LESSEE shl work the existg pit & any addonal pit or pits wch shl have been opened by him continuously & vigorously except in case of a genl strike or lock-out of workmen or other unavoidable interruption, & shl at his own expse keep the roads on the sd farm in good order & condon, but so that he shl not pay any royalty on the stone used for that ppose, & shl keep the quarry & any new pits wch he may open pperly fenced (c) so as to prevent accidents, & fill in any pit as soon as it is exhausted, & replace the mould so as to render it as fit as circes will admit for agricultural pposes.

No new
pit to be
opened.
Lessee to
work con-
tinuously.

6. EIR THE lessor or the lessee may at any time give notice to the other of them to determine this agrmt, & thrupon the licence to quarry stone shl cease except that the lessee shl have the rt to exhaust any pit then actually open, & the terms of this agrmt shl in such case continue in force until the whole of the stone then raised or to be raised from any open pit shl have been sold & the royalties pd & until the lessee shl have in all respts complied with article 5 of this agrmt.

Power to
determine
agreement
by notice.

7. IF THE lessee shl neglect to pay the rent or royalties for twenty-one days, whether legally demanded or not, or if he shl assn or underlet the premes [or if he shl become bkpt, or enter into an arrangemt or composon with his credors,] the lessor may by notice in writg given to the lessee or left for him at the sd quarry put an end to this agrmt. IN WITS, &c.

Power of
re-entry.

(c) See 50 & 51 Vict. c. 19.

LEASES (MISCELLANEOUS FORMS).

Lease by
joint tenants (a).

I. *PARTIES*, A. & B., *lessors*, hereafter called the lessors, wch expression shl include their hrs & assns, where the context so admits, 1; C., *lessee*, hereafter called the lessee, wch expression shl include his exs, ads, & assns, where the context, &c., 2: *WITNETH, conson, &c.*, the lessors do hby demise, &c., *pcels, habendum, reddendum*, to the lessors, *covts by the lessee* "for himself & his assns" *with* the lessors, *usg that expression throughout: Power for*, the lessors, *to re-enter*: AND THE lessors do hby [for themselves & their assns (b)] covt, &c., *to insure, &c., & for quiet enjoymt*, witht interruption by the lessors, or any pson claimg under them or eir of them; *power to lessee to determine lease on givg notice*, to the lessors or eir of them, or leavg such notice at their or his respive usual or last-known place of abode.

Lease by
tenants in
common.

II. *PARTIES*, A., B., & C., hereafter called the lessors, wch expression shl include their respive hrs & assns, where the context so admits, 1; D., hereafter called the lessee, wch expression, &c., *as in form I.*, 2: *WITNETH, conson, &c.*, the lessors, accdg to their respive estes & intts, do resply hby demise, &c., *pcels, habendum, reddendum* [to the lessors, accdg to their respive estes & intts, *or omittg these words*]; *covts by the lessee* "for himself & his assns" *with*, the lessors, & also separately with each & every of them; *power to*, the lessors, or any of them, *to re-enter*: AND THE lessors do hby [for themselves resply & their respive assns (b)] covt, &c., *to insure, &c., & for quiet*

(a) The first 25 of these forms are intended merely to indicate the variations in each case from the common form of lease by an owner in fee to one lessee. As to using an interpretation clause, see p. 670, note. The variations for an underlease are given in the precedent of an underlease, p. 724.

(b) See note, p. 694.

enjoymt, witht interruption by the lessors, or any of them, or by any pson or psons claimg through or under them or any of them; *power to lessee to determine lease on givg notice*, to the lessors or any of them, or leavg such notice at their or his respive usual or last-known place of abode.

III. *PARTIES*, A., hinafter called the lessor, wch expression, &c., 1; B. & C., hinafter called the lessees, wch expression shl include their exs, ads, & assns, where the context so admits, 2: *WITNETH, conson*, the lessor doth hby demise unto the lessees, *pcels, habendum*, to the lessees, *reddendum*: AND THE lessees do hby for themselves & their assns (c), covt, &c., that they the lessees, *using that expression throughout; provo for re-entry on non-paymt of rent or breach of covt by*, the lessees, [or if the lessees shl become bkpt, &c.]; *covt by lessor* ["for himself & his assns"] *with*, the lessees, *to insure, &c., & for quiet enjoymt by*, the lessees.

Lease to joint tenants.

IV. *PARTIES*, A., hinafter called the lessor, wch expression, &c., 1; B. & C., hinafter called the lessees, wch expression shl include their respive exs, ads, & assns, where the context so admits, 2: *WITNETH, conson*, the lessor doth hby demise unto the lessees, *pcels, habendum*, to the lessees as tenants in common, *reddendum*: AND THE lessees do hby for themselves & their assns, & as a septe covt each of them doth hby for himself & his assns (c), covt, &c., that they, the lessees, *usg that expression throughout, provo for re-entry on non-paymt of rent, or breach of covt by*, the lessees [or if the lessees shl become bkpt, &c.]; *covt by lessor* ["for himself & his assns"], *with* the lessees, & also septe with each of them, *to insure, &c., & for quiet enjoymt by*, the lessees.

Lease to tenants in common.

V. *PARTIES*, The — Co, Limd., hinafter called the Co, wch expression shl include their assns where the context, &c., 1; B., hinafter called the lessee, wch expression, &c., 2. *This*

Lease by limited company.

(c) The lessees' covenants in leases to joint tenants are often in practice, although the beneficial interest survives, made joint and several, as in leases to tenants in common, see the next form. In any case the covenant should be worded so as to make the intention clear; as to the construction put upon covenants in this respect, see *Burns v. Bryan*, 12 App. Cas. 184, where in a Scotch lease to joint tenants the covenant was held to be joint and several; *White v. Tyndall*, 13 App. Cas. 263, where conversely in a lease to tenants in common, the covenant was held to be joint only; Elph. N. & C. Interp. Deeds, p. 434.

As to covenants by several lessees.

will be in the form for a lease by jt tenants, form I., p. 842, usg throughout the expression, the Co, except that notices by the lessee may be given, to the Co, or left at their registered office.

Lease to
limited
company.

VI. *PARTIES, A.,* hinafter called the lessor, wch expression, &c., 1; *The — Co, Limd,* hinafter called the Co, wch expression shl include their assns where the context, &c., 2. *This will be in the form of a lease to jt tenants, form III., p. 843, usg throughout the expression, the Co, except that the proro for re-entry will, if so intd, include the case, if the Co shl enter into liquidon, whether compulsory or voluntary (a), or if their assns, not being a Co, shl become bkpt or enter into any arrangemt or composon, whether under any bkcy act or orwise, with their or his credors.*

Lease un-
der power
by trustees
having
legal
estate.

Variation
where
tenant for
life joins
to consent
and cove-
nant (c).

VII. *PARTIES, A., B., & C., trees,* hinafter called the lessors, wch expression shl include their heirs (b) & assns where the context so admits, 1; [*D., tenant for life, 2*]; *E., lessee,* hinafter, &c., 3: *WITNETH, conson,* the lessors, *refce if thought fit to power* [& with the consent hby testified of the sd D.] do hby demise, &c., *pcels, habendum, reddendum,* to the lessors, *usg that expression throughout: covenants by the lessee* “for himself & his assns” *with the lessors: power for, the lessors, to re-enter:* **AND THE lessors do hby** [for themselves & their assns (d)],

(a) As to the rights of the lessor on the company going into liquidation, see *Gooch v. London Banking Association*, 32 Ch. D. 41.

(b) The word “hrs” is conceived to be right notwithstanding s. 30 of the Conv. Act, 1881, vesting trust estates in the personal representatives.

As to
consent of
tenant for
life.

(c) If the powers of the Settled Land Act, 1882, are applicable (see p. 705, note), the consent of the tenant for life, or person having the powers of a tenant for life under the Act, would be necessary under s. 56 to the exercise by the trustees of a leasing power (except in the case of a settlement by way of trust for sale, see the Act of 1884, ss. 6 and 7). This is a reason for granting the lease under the Act, and not under the power in the settlement. As to the case of the tenant for life, &c., being an infant or lunatic, see ss. 60, 62. Under the Lunacy Act, 1890, 53 Vict. c. 5, s. 120, the committee may by leave of the judge exercise the powers of leasing vested in the lunatic by the Act, *In re Salt*, [1896] 1 Ch. 117. As to what is the “best rent” in farming leases granted under powers, see the Agricultural Holdings Act, 1883, s. 43, above, p. 762, note; and in leases for artizans’ dwellings, see 53 & 54 Vict. c. 70, s. 74. As to what are proper covenants in a lease under a power, see *Davies v. Davies*, 38 Ch. D. 499.

Restriction
of personal
liability of
trustees.

(d) See p. 696, note. The following provisions may be added here if desired to protect the trustees from personal liability under the covenants (other than for quiet enjoyment) after parting with the estate:—“to the intent to bind the revon of the sd demised premes expectant

covt, &c., to insure, &c., & for quiet enjoyment [or substitute covt by D. for quiet enjoyment (e)]; power to lessee to determine lease as in lease by jt tenants.

VIII. PARTIES, A., B., & C., *tres*, hereafter called the lessors, wch expression shl include the psons or pson for the time being entled to the revon of the hds hby demised, expectant on the term hby grted (g), where the context so admits, 1; D., *tenant for life*, 2; E., *lessee*, hereafter called the lessee, wch expression, &c., 3. WITNETH, *conson*, the lessors, *refce if thought fit to power*, & with the consent (hby testified) of the sd D., do hby [appt (h) &] demise, &c., *pcels, habendum, reddendum genlly, Covts by lessee*, "for himself & his assns," with, the lessors, *usq that expression throughout*. Power for, the lessors, *to re-enter*: And the lessors do hby [for themselves & their assns (i),] covt, &c., to insure, &c., & for quiet enjoyment, witht interruption by the lessors, or any pson claiming under them or any of them. Power to lessee to determine lease on *givg notice*, to the lessors or any of them, or leavg the same at their or his usual or last known place of abode.

Lease under a power by trustees having no estate, the tenant for life consenting (f).

IX. PARTIES, A., *tenant for life*, hereafter called the lessor, wch expression shl, &c., *as in last form*, 1; B., *lessee*, hereafter called the lessee, wch expression, &c., 2. WITNETH, *conson*, the

Lease by tenant for life under a power in a settlement or will (k).

on the terms hby grted & the psons or pson from time to time entled thto so far as they lfully can or may but not so as to render themselves respby psonally liable in damages for any breach of the covts hereafter contd except in respt of the acts & defaults of themselves respby & their own respive hrs, exs, & ads." Reference may be made to the Agricultural Holdings Act, 1883, s. 31, protecting trustees from personal liability for the payment of compensation to outgoing tenants.

(e) Any merely personal covenant, such as that for quiet enjoyment, may be entered into by the tenant for life; but as, in this case, he is not "the lessor," it is doubtful whether the obligation of any of his covenants could be made to run with the reversion, see the Conv. Act, 1881, s. 11.

(f) See p. 844, note (c).

(g) Or, "shl include the psons or pson for the time being entled to rece the rents hby reserved;" p. 671, note.

(h) The word "appt," though appropriate, where the lease operates under the Statute of Uses, is not necessary.

(i) See p. 694, note.

(k) Under an ordinary power a tenant for life may lease to a trustee for himself, *Lord Cardigan v. Montague*, 2 Sug. Pow. 7th ed., App. p. 551; Power of tenant for

lessor, *refce if thought fit to power*, doth hby [appt (a) &] demise, &c., *pcels, habendum, reddendum genlly, covts by lessee* "for himself & his assns" *with*, the lessor, *usg that expression throughout*; power for, the lessor, to re-enter: AND THE lessor doth hby [for himself & his assns (b)], covt, &c., to insure, &c., & for quiet enjoymt, witht interruption by the lessor or any pson claiming under or in trust for him, or under the sd indre of settlemt, or, "will" (c): Power to lessee to determine lease on givg notice, to the lessor, or leavg the same at his usual or last known place of abode.

Lease by tenant for life, or other limited owner, under the Settled Land Acts (d).

life to lease to trustee for himself.

X. PARTIES, A., tenant for life, or other limd owner, hinafter called the lessor, wch expression, &c., as in form VIII., 1; [B., C., & D., trees, 2;] E., lessee, hinafter called the lessee, wch expression, &c., 3: WITNBTH, *conson [if a fine is taken it will be pd to the trees]*, the lessor by virtue of the powers of the Settled

8th ed. 918; *Wilson v. Sewell*, 4 Burr. 1979; *Bevan v. Habgood*, 1 J. & H. 222; but it is conceived that this does not hold good in the case of a lease under the Settled Land Act, 1882, having regard to s. 53, expressly placing the tenant for life in the position of a trustee. Section 12 of the Settled Land Act, 1890, providing for a difficulty of this kind in relation to sales, &c., does not apply to leases.

(a) See page 845, note (h).

(b) See page 694, note (a).

(c) If the instrument is not mentioned before say, "an indre dated, &c., & made, &c.," or "the will dated, &c., of the late X., of, &c."

Leasing powers under Settled Land Acts.

(d) As to the general provisions of the Settled Land Acts, see above, p. 456, note. The Act of 1882 authorizes (ss. 6 and 7), leases of the settled "land" (as defined by s. 2), or any easement or right over it, "whether involving waste or not" (which seems to exclude the application of *Davies v. Davies*, 38 Ch. D. 499, as to exempting the tenant from liability for permissive waste), as to occupation or farming leases for 21 years, as to building leases for 99 years, and as to mining leases for 60 years, to take effect in possession within 12 months, at the best rent, regard being had to any fine taken or money laid out on the land, or other circumstances; and subject to other usual restrictions, the conditions of re-entry to be on non-payment of the rent for not exceeding 30 days. Any statement in or indorsed on the lease signed by the lessor as to any matter of fact or calculation in relation thereto is in favour of the lessee to be sufficient evidence; this would no doubt apply to a statement that the rent is the best. As to the rent in a mining lease varying with the price of the minerals got, see the Act of 1890, s. 8. As to what is the best rent in a farming lease or for artizans' dwellings, see above, p. 844, note (c). As to the special powers and requirements in the case of building leases, see ss. 8 and 16 (above p. 732, note, and p. 734, note), and the Amendment Act of 1889 (as to giving an option of purchase); and in the case of mining leases, see ss. 9 and 17; as

Land Acts, 1882 to 1890 (e) & of every or any other power enableg him in this behalf doth hby demise, &c. *The rest of the form will be the same as the last.*

to the power of the Court to authorise building or mining leases for longer terms or on other conditions, see s. 10; as to leases pursuant to a contract by a predecessor in title (see as to this before the act, *Davis v. Harford*, 22 Ch. D. 128), or a covenant of renewal, or for confirming a previous lease, see s. 12; as to a lease on the surrender of a prior lease, see s. 13; as to copyholds, see s. 14; as to undivided shares, s. 19; as to the exception of mansion-houses and land occupied therewith, see the Act of 1890, s. 10; and as to the power to grant easements affecting the mansion, see *Sutherland v. Sutherland*, [1893] 3 Ch. 169. As to the insertion of a covenant for renewal, see above, p. 697, note. By the Amendment Act of 1884, s. 4, fines are to be deemed capital money (but as to a lunatic tenant for life, see the Lunacy Act, 1890, s. 123 (2)), so as to be payable (under s. 22 of the original Act) to the trustees, who should therefore in that case be parties, or else sign an indorsed receipt. As to the power to enter into and vary, &c., contracts for leases, see s. 31; and as to the power to execute deeds for effectuating leases, see s. 20. Leases not exceeding three years, whereby the lessee is not exempted from punishment for waste (see 37 Sol. J. 76) may be under hand only, Act of 1890, s. 7 (iii.). The statutory power will be especially useful in the case of a settlement of leaseholds, as the tenant for life may, under s. 20, grant a legal lease without the concurrence of the trustees, although the legal estate is in them; which could not have been done under the old law, leaseholds not being within the Statute of Uses.

As to the statutory notice required to be given to the trustees of the intention to grant the lease under the Act of 1882, s. 45, as modified by the Act of 1884, s. 5, see p. 464, note; but in the case of rack-rent leases not exceeding 21 years, where the lessee is not made dispunishable for waste, the necessity for notice is dispensed with by the Act of 1890, s. 7 (i). In *Mogridge v. Clapp*, [1892] 3 Ch. 382, a lessee without notice and dealing in good faith was held to be protected notwithstanding the want of notice, and the fact that there were no trustees to whom it could have been given.

As to
notice to
trustees.

As to what are proper covenants in leases under powers, see *Davies v. Davies*, 38 Ch. 499.

Reference may here be made to the Acts (12 & 13 Vict. c. 26, 13 & 14 Vict. c. 17, see 3 Dav. Prec. 517), relieving against defective execution of powers of leasing, which would, as it seems clear, apply to leases under the Settled Land Acts; see Farwell on Powers, p. 345, *Sutherland v. Sutherland*, *ubi supra*.

Defective
execution
of leasing
powers.

Where the lease is a mining lease the Settled Land Act, 1882, s. 11, provides that where the tenant for life is impeachable for waste as to the minerals, three fourths of the rent, and otherwise one fourth of the rent shall be capitalised. It will be observed however that the tenant for life is the person to grant the lease, and that under the Conv. Act, 1881, s. 10,

Mining
lease.

(e) The Act does not require that the lease should refer to it (*Mogridge v. Clapp*, *ubi supra*), but it is desirable that the intention that it should operate under the Act should be expressed. This form may be used *mutatis mutandis* for a lease under any other Act.

Lease of
freeholds
held in
undivided
shares,
some being
in settle-
ment.

XI. *PARTIES*, A., B., C., D., &c., *owners or donees of statutory or express leasg powers*, hinafter called the lessors, wch expres-
sion, &c., *as in form VIII., 1*; E., *lessee*, hinafter, &c., 2.
WITNETH, *conson*, the lessors by virtue of their sevl & respive
estes & intts or statutory or other powers do resply hby grt,
appt, & demise, *pcels, habendum, reddendum genlly, covts by*
lessee "for himself & his assns" *with*, the lessors, & also
septely with each & every of them, *power for*, the lessors, *to*
re-enter, & the lessors do hby [for themselves, and their
respive assns], *jtly & sevlly covt, &c., to insure, &c., & for quiet*

the entirety of the rent can be recovered by the reversioner, i.e., by the
tenant for life. It appears therefore that the lease ought to be in the usual
form, that the trustees need not be parties, and that the tenant for life
must, as he receives the rent, pay the proper proportion to the trustees.
Sometimes the lessees stipulate that they shall be allowed to pay the proper
proportion of the rent to the trustees; if this course (which as above stated
appears to be improper) is assented to, the trustees will be parties to the
lease, say, "hinafter called the trees, wch expression shl include
the trees or tree for the time being for the pposes of the Settled
Land Acts, 1882 to 1890, of an indre, &c." the rent will be reserved
generally, continue as follows:—"THE sd sevl rents to be pd clear
of all dedons & to be pd durg the lifetime of the lessor in
mner follg (that is to say), three-fourth pts of each of the sd
rents shl be pd by the lessees to the lessor, & the remaing
fourth pt shl be pd by the lessees to the trustees. AND THE
LESSEES: hby covt with the lessor & also septely with the
trees that the lessees will throughout the sd term if the lessor
shl so long live pay the rents hinfre reced to the lessor & to
the trees resply in the proportions & at the times hinfre
appted in that behalf clear of all dedons. AND THE LESSEES
hby also covt with the lessor that if durg the subsistce of
the sd terms the lessor shl die the lessees will thenceforward
durg the residue of the sd term pay to the revoner or revoners
the sd rents hinfre reserved at the times hinfre apptd in that
behalf clear of all dedons." Provd always & it is hby decld
that if & so often as any pt of the proportion of the rents
hby made payable to the lessor shl be in arrear, &c., the
lessor, & if & so often as any pt of the proportion of the rents
hby made payable to the trees shl be in arrear, &c., the trees,
& that if & so often as after the death of the lessor any pt of
the rents hby reserved shl be in arrear the revoner or revoners
may enter into, &c., *continue power of distress*, p. 821.

enjoymt, witht interruption by the lessors or any of them or any pson claimg under or in trust for them, or any of them : *Power to lessee to determine lease on givg notice*, to the lessors or any of them, or leavg the same at their or his usual or last known place of abode.

XII. *PARTIES*, A., *husbd*, hinafter called the lessor, wch expression shl include the pson or psons for the time being entled to rece the rent hby reserved, where the context so admits, 1 ; B., *lessee*, hinafter, &c., 2 : *WITNETH*, *conson*, *demise by A.*, *pcels*, *habendum to lessee for any term not exceedg twenty-one yrs in posson ; reddendum genlly ; covts by lessee* “for himself & his assns” *with*, the lessor, *usg that expression throughout : Power to*, the lessor, *to re-enter if the rent is in arrear for not exceedg twenty-eight days, or on breach of covt ; Covts by*, the lessor, [“for himself & his assns”], *to insure, &c., & for quiet enjoymt*, witht interruption by the sd A. or C., his wife, or eir of them, or any pson claimg under them or eir of them : *Power to lessee to determine lease on givg notice to*, the lessor.

Lease by a husband of his wife's freeholds under the Settled Estates Act, 1877, s. 46 (a).

XIII. *PARTIES*, A., & B., his wife, *lessors*, hinafter called the lessors, wch expression, &c., *as in last form*, 1 ; C., *lessee*, hinafter, &c., 2 : *WITNETH*, *conson*, the lessors, by virtue of the powers of the Settled Land Acts, 1882 to 1890, & of every or any other power enablg them or eir of them in this behalf do, & each of them doth hby demise, &c., *pcels*, *habendum*, *reddendum genlly, covts by lessee* “for himself & his assns” *with*, the lessors, & also septely with each of them ; *power to*, the lessors, *to re-enter* : AND THE lessors do hby for themselves resply [& their respive assns] covt with the lessee, *to insure, &c., & for quiet enjoymt*, witht interruption by the lessors or eir of them, or any pson claimg under them or eir of them.

Lease by husband and wife of the wife's settled estate under the Settled Land Act, 1882, s. 61 (b).

(a) This form can only be required for a woman married before 1st January, 1883, and as to property her title to which accrued before that date. In any other case a married woman can now grant leases by virtue of the Married Women's Property Act, 1882 (see p. 706, note), as owner (if she is absolutely entitled), or under the Settled Land Act, 1882, s. 61 (2), if the estate is settled. As to what are proper covenants, see *Davies v. Davies*, 38 Ch. D. 499.

Married women.

(b) See p. 466, note. Where the wife is entitled for her separate use, or as a *feme sole* (under the Married Women's Property Act, 1882), she will grant the lease under s. 61 (2), without her husband, according to form x., p. 846.

Power to lessee to determine lease on givg notice to, the lessors or eir of them.

Lease to a married woman as her separate estate (a).

XIV. *PARTIES*, A., *lessor*, hinafter called the lessor, wch expression, &c., 1; B., the wife of C., of, &c., hinafter called the lessee, wch expression, &c., 2. *WITNETH, conson, if a premium is pd*, say, “of the sum of £—— now pd to the lessor by the lessee out of moys formg pt of her septe este,” & of rents & corts, demise, unto the lessee, *pcels, reserrons, habendum*, to the lessee as her septe este: *Covts by the lessee, & power of re-entry, & covts by the lessor & other clauses, all in the usual form.*

Lease by guardian of an infant under a power or the Conv. Act, 1881, s. 41 (b).

XV. *PARTIES*, A., of, &c., the gdian of X., a minor under the age of twenty-one yrs, who is entled in fee simple, or, “for a leasehd intt at a rent,” to the hds hby demised, & who is hinafter called the revoner, wch expression shl include the pson or psons for the time being entled to the revon of the sd premes hby demised, expectant on the term hby grted, where the context so admits, 1; B., *lessee*, hinafter, &c., 2. *WITNETH, conson*, the sd A. by virtue of [the Convvg & Law of Ppty Act, 1881, &] every or any power enablg him doth hby demise, *pcels, reserron of mines, &c., to*, the revoner. *The rest of the lease will follow the standard form, usg the words, “revoner” & “lessee” throughout, except that the covt for quiet enjoymt will be by A. witht interruption by the sd A., or the revoner, &c., any other lessor’s covts such as to repair, will be by A., on behalf of, & so as to bind the revoner, that the revoner will,*

Lease to a married woman.

(a) Before the Married Women’s Property Act, 1882, in order to avoid the difficulties arising from the granting of a lease direct to the wife (inasmuch as her covenants were at law a nullity, and the burden of them could not run with the land), the proper way was to grant the lease to the husband, or some other person as trustee, who entered into the covenants; but as every married woman is by that Act, s. 1, enabled to acquire, hold, and dispose of property, and to contract, and to sue and be sued, as a *feme sole*, it seems that the lease may now always be granted to her without the intervention of a trustee, and her covenants will be enforceable against her by action without joining her husband, to the extent of her separate estate; and that the obligation of them will run with the land at law (see *Sutherland v. Sutherland*, [1893] 3 Ch. 169). The case where the husband is the lessor may be an exception, as it is not clear that he can lease (unless under a power operating under the Statute of Uses, or a statutory power), direct to his wife (see above, p. 610, note, *Sutherland v. Sutherland*, *ubi sup.*); and in that case it may be better to interpose a trustee.

(b) See p. 706, note.

&c. *Power to lessee to determine lease on notice to, the revoner.*

XVI. *PARTIES*, A. & B., *trustees*, actg on behalf of X., a minor under the age of twenty-one yrs, who is tenant for life [*or, a pson havg the powers of a tenant for life under the Settled Land Acts, 1882 to 1890*] of the hds hby demised, &c., *as in form xv.*, 1; C., *lessee*, hinafter, &c., 2. WITNETH, *conson*, the sd A., & B., on behalf of the sd infant by virtue of the powers of the Settled Land Acts, 1882 to 1890, & of every or any other power enablg them do hby demise, &c., *as in form xv.*

Lease by trustees on behalf of infant under Settled Land Acts (c).

XVII. *PARTIES*, A. & B., *mtgees*, hinafter called the lessors, wch expression shl include the psons or pson for the time being entled to rece the rent hby reserved (e), where the context so admits, 1; C., *mtgor*, 2; D., *lessee*, hinafter called the lessee, wch expression, &c., 3: WITNETH, *conson*, the lessors, at the reqt of the sd C. (f), do hby demise, & the sd C. doth hby demise & confirm unto the lessee, *pcels, habendum, reddendum genlly; covts by lessee* "for himself & his assns," with the

Lease by mortgagor and mortgagees (d).

(c) See ss. 59, 60, and above, p. 465, note, and p. 706, note.

(d) See also Precedents XVIII., p. 852, and XIX., p. 853. Where the mortgage is since 1881, the mortgagor or mortgagee, when respectively in possession, is enabled by the Conv. Act, 1881, s. 18 (if not excluded by the mortgage deed), to grant ordinary occupation or building leases, reserving the best rent without fine; so that the concurrence of both in the mortgage will now often be unnecessary. Even before the Act ordinary rack-rent leases were often granted by the mortgagor alone, such leases being valid as between the parties to them, and not likely to be disputed by the mortgagee; but as no tenancy was created between the tenant and the mortgagee, the latter could not require payment of the rent to him; *Towerson v. Jackson*, [1891] 2 Q. B. 484.

Leases by mortgagor and mortgagee.

(e) This form of interpretation clause is better than that defining "lessors" as including the reversioners for the time being, since the mortgagor (though not the legal reversioner) while in possession and receipt of the rents is the proper person to give licences and consents and to give and receive notices and exercise generally the functions of a landlord: and it enables the ordinary clauses to be used with little if any alteration; this is aided by the Judicature Act, 1873, s. 25 (5), and the Conv. Act, 1881, s. 10; see *Municipal, &c. Society v. Smith*, 22 Q. B. D. 70; the clause at the end of the form is added to make the matter clearer.

As to frame of leases by mortgagor and mortgagee.

(f) If the mortgagees do not enter into any covenant for quiet enjoyment, the words "but not so as to imply any warranty or covt," should be inserted here so as to exclude any implied warranty or covenant arising from the word "demise." See *Elph. N. & C., Interp. Deeds*, 424. As to trustees and mortgagees covenanting for quiet enjoyment, see p. 696, note.

As to the exclusion of the covenant implied by the word "demise."

lessors, & also septely with the sd C., his hrs & assns [*covt by lessor to insure (a)*]: AND each of them the lessors resply, & the sd C., so far as relates to his own acts & deeds, & the acts & deeds of psons claiming under him, doth hby covt, &c., *for quiet enjoymt*, witht interruption by the lessors & the sd C. or any of them, their or any of their hrs, exs or ads, or any pson claiming under them or any of them: *Provo for re-entry: Power to lessee to determine lease on givg notice*, to the lessors or any of them: PROVD always, &c., that until the sd A. & B., their hrs or assns shl require paymt of the sd rent to them & give to the lessee or leave upon the sd demised premes notice in writg requirg such paymt, the sd rent shl be pd to the sd C., his hrs or assns, whose rect shl be a sufft dischge for the same: PROVD also, &c., that any licence, consent, or act hinbfe required or authorised or wch may be necy to be given or done by the lessors hrunder may be validly & effectually given or done by the psons or pson for the time being entled to rece & give a dischge for the sd rent, & any notice required to be given by or to the lessors hrunder shl be valid & sufft, if given by or to the psons or pson so entled.

Lease by
mortgagor
and two
sets of
mortga-
gees (b).

XVIII. *PARTIES*, A. & B., *first mtgees*, hinafter called the lessors, wch expression, &c., *as in the last form*, 1; C. & D., *second mtgees*, 2; E., *mtgor*, 3; F., *lessee*, hinafter called the lessee, &c., 4; WITNETH, *conson*, the lessors & the sd C. & D., at the reqt of the sd E., accdg to their respive estes & intts, do resply hby demise & the sd E. doth hby demise & confirm unto the lessee, *pcels, habendum, reddendum genlly: covts by lessee* "for himself & his assns," *with*, the lessors, & also septely with the sd C. & D., their hrs & assns, & also septely with ~~the~~ sd E., his hrs & assns. AND EACH of them the lessors & the sd C., D., & E., so far as relates to his own acts & deeds & the acts & deeds of all psons claiming under him, doth hby, &c., *covt for quiet enjoymt*, witht interruption by the lessors, or the sd C., D., & E., or any of them, their or any of their hrs, exs, ads, or assns, or any pson claiming under them or any of them. *Provo for re-entry: Power to lessee to determine lease on givg notice to*, the lessors, or any of

(a) The liability of the mortgagees under this covenant might be limited as in the case of trustees, see p. 696, note.

(b) See notes to last form.

them. *Provo*, that until the sd A. & B., their hrs & assns, shl require paymt of the sd rent to them, &c., *as in the last form*, the sd rent shl be pd to the sd C. & D., their hrs & assns, in case they shl have given or left such a notice for paymt thof to them, & if not, then to the sd E., his hrs & assns, & that the rect of the pson or psons to whom the sd rent shl for the time being be payable under the provons lastly hinbfe contd shl be a good dischge for the same. Further *provo* that any licence, consent, &c., *as at end of last form*.

XIX. *PARTIES*, A., *mtgor*, hinafter called the lessor, wch expression, &c., *as in form xvii.*, 1; B., *lessee*, hinafter, &c., 2: WITNETH, *conson*, the lessor by virtue of [the Conveg & Law of Ppty Act, 1881 (d), &] every power enabl^g him in this behalf doth hby demise, *pcels*, *habendum*, *reddendum genlly*, *corts by*, lessee, *with*, lessor, *power for*, lessor, *to re-enter*, *corts by*, lessor, *to insure*, &c., & *for quiet enjoymt*. *Power to lessee to determine lease on girg notice to*, lessor.

Lease by a mortgagor under a power in the mortgage, or the Conv. Act, 1881, s. 18 (c).

XX. *PARTIES*, A., *lunatic*, "a pson of unsound mind actg by B., of, &c., the committee of his este," *if not found lunatic by inquisition*, say, "a pson of unsound mind not so found by inquisition actg by B., the pson appointed to exercise powers of a committee of his este," hinafter called the lessor, wch expression, &c., 1; C., hinafter called the lessee, wch expression, &c., 2. *Recite order enabl^g the lease to be granted*. *Approval of master*, see p. 561: WITNETH, *conson*, the lessor actg by the sd B. as afsd, doth hby demise, *pcels*, *habendum*, *reddendum*, *corts by*, lessee, *with*, lessor, *power for*, lessor, *to re-enter*, *corts by*, lessor (e), *with*, lessee. *Power to*, lessor, *to re-enter*.

Lease by a lunatic.

XXI. *PARTIES*, A., *parson*, hinafter called the lessor, wch expression shl include his succors & assns, where, &c., 1; *Ecclesiastical Commrs*, 2; B., *patron* of the sd rectory, 3; C.,

Lease by parson under Ecclesiastical Leasing Acts (f).

(c) See p. 707, note; p. 851, note. As regards leases under the Conv. Act, 1881, s. 18, although the lessor has not the legal reversion, the lease will operate as if the mortgagee had joined in it, and the covenants will run with the land; see *Municipal, &c. Society v. Smith*, 22 Q. B. D. 70. That the mortgagor may lease to a trustee for himself, see *Bevan v. Habgood*, 1 J. & H. 222.

(d) The reference to the Act is not necessary; and if it is desired not to disclose the fact that the property is in mortgage, will be omitted.

(e) As to covenants by lunatics, see p. 561, note.

(f) See p. 706, note.

lessee, hinafter, &c., 4; *conson*, the lessor by virtue of the powers & provons contd in the Ecclesiastical Leasg Acts, & of all other powers him enablg with the consent & approval of the sd Ecclesiastical Commrs for England, & with the consent of the sd B., as such patron as afsd testified by their respdy being pties to & executg these psnts doth hby demise unto the lessee, *pcels*, formg pt of the glebe lands of or belonging to the sd rectory of —, *habendum, reddendum, covts by lessee*, with the lessor, & also by way of septe covt with the sd Ecclesiastical Commrs, their succors & assns, *covt by lessor*, for himself & his succors, *restrictg his psonal liability, as in form*, p. 844, *note, for quiet enjoymt*. *Provo*, that as betn the sd Ecclesiastical Commrs & any incumbent of the sd rectory it shl not be compulsory on the sd Commrs psonally to take pcdgs to enforce the observee of any of the covts on the pt of the lessee hinfte contd, but that it shl be entirely discretionary with them to take such pcdgs or not as they may think pper.

Lease by two partners in a firm to the remaining partner in trust for the firm (a).

XXII. *PARTIES*, A. & B., two of the ptners in the firm of —, hinafter called the lessors, wch expression, &c., 1; C., the remaing ptner in the sd firm, hinafter called the lessee, wch expression, &c., 2: *WITNETH, conson*, the lessors do hby demise unto the lessee, *pcels, habendum, reddendum, usual lessees' covts*, [*And not to assn, underlet, or pt with the posson of the sd*

Case of one of lessors being also lessee.

(a) Under the Conv. Act, 1881, s. 50 (and s. 2, making the word "convey" include "lease"), a lease of freeholds might be granted by one or more persons to himself or themselves jointly with another or others; but neither under this enactment (which does not apply to leaseholds), nor under 22 & 23 Vict. c. 35, s. 21 (which applies to leaseholds, but only to assignments), can an underlease be so granted. Even in the case of freeholds the lease in this form should be avoided, to prevent questions as to the operation of the covenants and the lessor's remedies; the proper course is to grant it to a trustee (see the Partnership Act, 1890 (53 & 54 Vict. c. 39, s. 20 (2)), as in the above form; the trust being declared in the lease itself, or, if it is desired that the interest of the firm should not appear on the title, by a separate deed, as in the following form; the trustees would, of course, have the right of indemnity without express declaration:—

Deed poll by lessees declaring that the lease was granted in trust for a partnership firm

"TO ALL TO WHOM THESE PSNTS shl come, A. & B., of the firm of — send greetg [*Recite lease of even date from C. & D. to A. & B.*], AND WHAS the sd A., B., C., & D. carry on in co-ptnp togr the business of — under the style of — & Co., & the sd lease was grted by the sd C. & D. to the sd A. & B. for the benefit of the sd ptnp firm, & the names of the sd A.

premes, or any pt thof, or permit the same to be used or occupied by any pson or psons whomsr, except the sd firm of —, *witht licence*, & that the sd premes shl not at any time durg the sd term, witht such licence as afsd, be used for any business, trade, or ppose other than the business of — now carried on by the sd firm]: *Power of re-entry on non-paymt of rent or breach of covt*, [or in case the sd ptnp firm of —, or their assns for the time being, benefly entled to these psnts shl become bkpt, or enter into any arrangemt or composon with their credors under the provons of any bkptcy act or orwise, or suffer the sd premes or any pt thof, to be taken in exon.] *Covt by lessors for quiet enjoymt. Power to the lessee*, with the consent or concurrce of the sd ptnp firm of —, or the psons or pson for the time being benefly entled to these psnts, *to determine the lease on givg six months' notice*. Provd always, &c., that the lessee shl stand possed of the sd premes hby demised in trust for the sd ptnp firm of —, & their assns, & permit the sd firm & their assns to occupy & enjoy the sd premes as pt of their ptnp este, or orwise, accdg to their benefl este & intt thrin [subjt & witht prejudice to the covt or condon hinbfe contd agst assnmt, underlettg, or partg with the posson of the sd premes witht the licence of the lessors as afsd], & that the lessee shl at all times hrafter be kept fully indemnified, reimbursed, & saved harmless by the sd ptnp firm, or their assns, agst all costs, damages, expses, & losses in respt of the sd rents hby reserved, & the covts, agrmts, & condons hrin contd, & all actions, pcdgs, & liabilities in respt thof.

XXIII. *PARTIES*, A., B., & C., *trees*, hinafter called the lessors, wch expression, &c., 1; D., *lessee*, hinafter, &c., 2; the sd C., 3: *WITNETH*, that in conson of the rents & covts on the pt of the lessee & the sd C., hinafter reserved & contd, the lessors,

Lease by trustees under a power with sanction of Court to a

& B. were used thrin as trees for the sd firm: Now THESE PSNTS WITS that the sd A. & B. do hby declare that they & their exs, ads, & assns, shl stand possed of the premes comprd in the sd lease of even date hwith in trust for the sd ptnp firm of — & Co., as pt of the capital & este thof."

consisting of themselves and the lessors.

IN WITS, &c.

trustee for
one of their
number
(a).

by virtue of the powers contd in the will & codl dated, &c., of Y., deced, & of every or any power enablg them in this behalf & in psuance of an order of the High Ct of Justice made in the Chancery Divon by Mr. Justice —, dated, &c., made on a summons in the mre of the trusts of the sd will & codl, & in an action, &c., authorisg & approvg of the grantg of this psnt lease, do hby at the reqt of the sd C., demise unto the lessee, *pcels, habendum to*, the lessee nevs in trust for the sd C., his exs, ads, & assns, *reddendum*, & the lessee doth hby for himself, & his assns, & as a septe covt the sd C. doth hby for himself, &c., covt with the lessors in mner follg, &c., *saying throughout*, “the lessee or the sd C.” *Corts by lessors* with the lessee & also as a septe covt with the sd C. in mner follg, &c., *saying throughout*, “the lessee or the sd C.” *Power to the lessee or the sd C. to determine the lease at the end of the first — yrs : Provo for indemnity of lessee by C. as in last form, mutatis mutandis.*

Agreement
for a lease
by trustees
subject to
the ap-
proval of
the Court
under the
Settled
Estates
Act or in
an action
(b).

XXIV. *PARTIES*, A. & B., the trees of the will of K., late of, &c., or, “of an indre of settlemt, dated, &c., & made, &c.,” hinafter called the lessors, wch expression shl include the psons or pson who wd for the time being be entled to rece the rent payable under any lease grted psuant to these psnts, where the context so admits, 1; C., *lessee*, hinafter called the tenant, wch expression, &c., 2. Subjt to the approval of the High Ct of Justice being obtd as hinafter mentd, the lessors agree to grt, & the tenant agrees to take a lease, &c., accdg to the form of lease contd in the schdle hto, or with such various as may be assented to by both pties, *addg any other usual clauses wch may be appropriate*. An applicon shl forthwith be made by the lessors to the Chancery Divon under the Settled Estates Act, 1877, or, “in an action of — r. —, being an action for the admon of the este of the late X.,” for the sanction of the ct to the sd lease, & in case such sanction cannot be obtd to such lease, eir in the form given in the schdle

(a) See note to last form. As to the necessity for the sanction of the Court arising from the lessee being one of the trustees, see 1 White & T. L. C., notes to *Fox v. Mackreth*.

(b) The necessity for an application to the Court is not likely often to arise in future, having regard to the Settled Land Act, 1882. See p. 705, note.

hto, or with such varions as may be assented to by both pties, on or bfe the — day of — next, or within such extended time as shl be agrd to by both pties, then this agrmt shl become void save & except the provons as to costs hinafter contd. The costs of the lessors & tenant as betn solor & client of & incidental to this agrmt & the negotiations preliminary thto, & the sd applicon to the ct (whether the same is grted or not), & the sd lease & counterpt shl be borne by the tenant & the costs of the lessors shl be pd to them or their solor by the tenant on demand. *Schdle.*

XXV. *PARTIES*, A., *lessor*, hinafter, &c., 1; B., *lessee*, hinafter, &c., 2; C. & D., hinafter called the guarantors, 3: *WITNETH*, in conson, &c., *rent & covts by lessee*, & of the covt by the guarantors hinafter contd, *demise, pcels, habendum, reddendum, covts by lessee, power of re-entry, & covts by lessor*. AND THE guarantors at the reqt of the lessee & in conson of the lease & grt hinfte contd, do hby jtly & sevlly covt & guarantee with & to the lessor THAT the lessee shl at all times duly pay the rents hby reserved in the mner & at the respive times hinfte apptd for the paymt thof: AND ALSO duly pform & observe all the covts on the pt of the lessee & condons hrin contd: AND THAT the guarantors resply, & their respive hrs, exs, or ads, will at all times hrafter, pay & make good to the lessor on demand, all losses, costs, damages, & expses occasd to him by the non-paymt of the sd rents or any pt thof, or the breach, non-pformce, or non-observece of any of the sd covts & condons on the pt of the lessee: AND FURTHER, that any neglect or forbearce on the pt of the lessor in enforcg or the givg time by him to the lessee for paymt of the sd rents, or any pt thof, or the pformce or observece of any of the sd covts & condons, shl not in anywise rele the guarantors or eir of them, their or eir of their hrs, exs, or ads, in respt of their or his liability under the covt or guarantee on their or his pt hinfte contd.

Lease, two
sureties
joining to
guarantee
rent and
perform-
ance of
covenants.

XXVI.

**AGREEMENT for YEARLY TENANCY of a small plot of
LAND at a NOMINAL RENT, so as to PREVENT a TITLE
being ACQUIRED under the STATUTES OF LIMITA-
TION (a).**

Parties. *PARTIES*, A., hereinafter called the landlord, 1; B., hereinafter called the tenant, 2: WHEREBY it is acknowledged & agreed, that the plot of ground situate, &c., now in the occupation of the tenant is & shall continue to be occupied by the tenant & his assigns as tenants from year to year to the landlord, his heirs & assigns, the owners for the time being of the freehold thereof, at a yearly rent of one shilling if demanded, payable on the — day of — in every year, SUCH TENANCY to be considered as having commenced on the — day of —, & to be determinable by either party at any time, on giving one calendar month's written notice to the other party. IN WITNESS, &c.

XXVII.

DEED extending TERM of lease by endorsement (b).

Recitals. *PARTIES*, A., 1; B., 2: WHEREAS the residue of the within mented term of — years is now vested in the said B., subject to the payment of the rent & performance of the lessee's covenants reserved by & contained in the within written lease: AND WHEREAS the reversion in fee expectant on the determination of the said term is now vested in the said A.: AND WHEREAS the said A. has agreed with the said B. to demise to him the within mented — & holds for the further term of — years, to commence on the — day of —,

Mode of preventing Statute running. (a) A mere acknowledgment that the piece of land is held under a tenancy at will, is not enough, having regard to 3 & 4 Will. IV., c. 27, s. 7. It should be from year to year, reserving a nominal rent and requiring short notice to determine it, and one payment of rent should be actually made and a receipt taken having regard to the 8th section of the Act, as it might be contended that the demise, though in writing, is not a valid demise within the Statute of Frauds until rent has been accepted under it.

(b) It is better, whenever the case admits, to grant a fresh lease in possession, on the surrender of the former lease.

i.e., the expiron of existg term, at the rent & subjt to the covts & provons hinafter reserved & expd: NOW THIS INDRE WITNETH that in conson of the rent hinafter reserved, & the covts by the sd B. hinafter contd, the sd A. doth hby demise unto the sd B., ALL the — hds & premes comprd in & demised by the within written indre, subjt to the like exceptions & reservons as are thrin contd; *Habendum*, p. 676, from the sd — day of —, subjt to & under the like rent & payable at the like times & in like mner as the rent reserved by the within written indre, & subjt to the like covts & agrmts on the pt of the lessee, & the like provon for re-entry in case of non-paymt of rent or breach of covt, or the happeng of any of the other events in the within written indre in that behalf mentd, & with the benefit of the like covts & agrmts on the pt of the lessor, & subjt to & with the like provons & condons in all respts as are in the within written indre contd, in like mner as if all such covts, agrmts, condons, & provons had been hrin repeated, with such modificons only as the diffces in the names of the pties & in the term of the lease & other circes may require: AND THE sd A. doth hby for himself, his hrs, exs, ads, & assns, covt with the sd B., & the sd B. doth hby for himself, his hrs, exs, ads, & assns, covt with the sd A., that he, the sd respive covtg pty, his hrs, exs, ads, or assns respily, will, durg the sd term of — yrs, pform & observe all such covts, agrmts, & provons as afsd, wch on his or their respive pt are or ought to be pformed & observed: PROVD ALWAYS, & it is hby agrd that if the term of — yrs grted by the within written indre shl be determined by virtue of the condon or provon for re-entry thrin contd, then these psnts shl become absolutely void. IN WITS, &c.

Wit-
nesseth.
Demise.
Parcels.

Haben-
dum.

Mutual
covenant
to perform
covenants
of lease.

Proviso for
determina-
tion by re-
entry.

XXVIII.

RELEASE *by* LESSORS *of* BREACH *of* COVENANT (c).

PARTIES, A. & B., *lessors* (hinafter called the lessors), 1; C. & D., *lessees* (hinafter called the lessees), 2. *Recite lease*, Recitals.

(c) Prior to 22 & 23 Vict. c. 35, s. 1, a defeasance to revive the condition of re-entry would have been necessary.

Wit-
nesseth.
Releasc.

Proviso.

referrg to covt broken. AND WHAS the premes comprd in the sd lease are now vested in the lessees: AND WHAS it has recently been discovered that by some inadvertce or neglect on the pt of the lessees a breach of the covt contd in the sd lease for, &c., has been committed whby a rt of action & also of re-entry has or may have arisen to the lessors: AND WHAS the lessors have agrd to exte the rele hinafter contd, subjt nevs to the provo hinafter contd. NOW THIS INDRE WITNETH, that in psuance of the sd agrmt the lessors do hby rele & waive all rt & title of action, re-entry & forfeiture, claims & demands whatsr wch they the lessors, or eir of them, now have, or has or might have agst the lessees or any pson or psons claimg under or by virtue of the sd lease for or by reason of any breach, non-observece or non-pformce htofore committed or suffered of the sd covt, or any other covt or agrmt on the pt of the lessees contd in the sd lease; And also do & each of them doth ratify & confirm the sd lease. PROVD ALWAYS that nothing hinfce contd shl prejudice or affect any of the rts or remedies of the lessors under the covts & condon of re-entry, & other condons & provons of the sd lease in respt of any future breach of any of the covts or agrmts on the pt of the lessees thrin contd. IN WITS, &c.

XXIX.

DEED confirming a FORFEITED LEASE with a MODIFICATION in the covenants and condition of re-entry (a).

Recitals.

Breach of
covenant.

Mode of
confirming
leases.

PARTIES, A., hinafter called the lessor, wch expression, &c., see p. 670, 1; B., hinafter called the lessee, wch expression, &c., 2: Recite lease from A. to B., containg a covt by the lessee to insure & rebuild. That premes were uninsured, & destron of bldg by fire, & that it had not been rebuilt: AND WHAS the lessor is advised that a breach of the sd covts for the insce & rebldg

(a) See note to last Precedent. If the confirming party has only an equitable right to impeach the lease, and no legal estate, a mere confirmation without a formal demise would probably suffice. As to the confirmation of leases, see 12 & 13 Vict. c. 26; 13 Vict. c. 17; and as to limited owners, see the Settled Land Act, 1882, s. 12 (iii.).

of the sd messe has occurred, in respt whof he is entled to recover damages under such respive covts, & to enforce the power of re-entry contd in the sd lease : AND WHAS an arrangemt Agreement. has been come to betn the lessor & lessee that, in conson of the sum of £—— to be pd by the lessee to the lessor, the lessee shl be dischgd from all liability to rebuild the sd messe, & that the sd lease shl be confirmed with such modifcons as are hinafter expd : NOW THIS INDRE WITNETH that in psuance of such arrangemt, & in conson of the premes & of the sum of £—— now pd by the lessee to the lessor, *rect*, the lessor doth hby confirm unto the lessee, ALL & SINGR the Confirmation. parcels. Habendum to lessee. premes comprd in & demised by the sd indre of lease : To HOLD the same UNTO the lessee, for the residue of the sd term of —— yrs, or other the term & intt now vested in him, dischgd from all liability to rebld the sd messe, but subjt to the sd yrly rent of £——, & to the covts & agrmts on the pt of the lessee & condons contd in the sd lease, save & except the covts for the insce, repair, & mtce of the sd premes, & the condon of re-entry on breach of such respive covts, so far as relates to the insce & rebldg of the sd messe. *Covt by lessor for quiet enjoymt by lessee on paymt of rent & pformce of covts of lease, "as hby modified."* AND THE lessor doth hby rele the Release by lessor. lessee from the sd covts for the insce & rebldg of the sd messe, & from all rts of action, claims, & demands, wch the lessor now has in respt of any past or existing breach of such covts, but so that the covts, & provo or condon of re-entry for breach of covt, contd in the sd lease, shl in all other respts remain in full force, & unaffected by these psnts. IN WITS, &c.

XXX.

CONFIRMATION *by* TENANT IN TAIL *on his coming of age of a* VOIDABLE MINING LEASE *granted by the Tenant for Life (b).*

PARTIES, A., tenant for life, 1 ; B., tenant in tail, 2 ; C., lessee,
 3. *Recite will devisg, inter alia, the lands & hds descd in the indre of lease hinafter recited, & the mines & minls thrin, to* Recitals.

(b) See note to last Precedent.

*the use of A. for life, remr to his eldest son in tail, & containg a power of leasg mines for twenty-one yrs. Death of testor & proof of his will. Voidable lease grted by tenant for life to lessee, settg out the pcels fully, with the powers, liberties, privileges, & easemts thrin expd, & subjt to the exceptions, reservons, & stipulons thrin contd, set out the habendum fully, at & under the rents & royalties by the sd indre of lease reserved, & subjt to the covts by the lessee & provons in the same indre contd, & the sd lease contains divers covts on the pt of the lessee & other provons: AND WHAS the sd B. is the eldest son of the sd A., & attned his age of twenty-one yrs on the ——— day of ———: AND WHAS the sd B., in the belief that the sd lease is benefl to owners of the hds devised by the sd will lately agrd to confirm the same, recite disentailg deed under wch hds in lease now stand limd to such uses as A. & B. shl jtly appt. NOW THIS INDRE, &c., the sd A. & B., in exercise & exon of the power or authority contd in the last recited indre, & of every other power or authority enablg them, do, & each of them doth, hby appt, & also grt, demise, & confirm unto the sd C., ALL & SINGR, the coal works, colliery, mines, beds & veins of coal & cannel, pces or pcels of land, rts, liberties, powers, easemts, & appurts, by the sd lease appted or grted, or expd to be appted or grted, except nevs & reservg & subjt to such exceptions, reservons, condons, & restrons, as in such indre of lease are expd: To HOLD the same premes (subjt as afsd), UNTO the sd C., his exs, ads, & assns, as from the ——— day of ———, the day of the commencemt of the lease, for the term of ——— yrs: PAYING thfor such rents, royalties, & sums of moy as wd have been payable in respt thof under the sd indre of lease, if such lease had been a valid demise durg the term thby grted, covts by C. with A. & also with B., & by A. & B. with C., “that all & singr the covts, agrmts, provons, & stipulons in the sd lease contd shl apply & be deemed to apply to the term of ——— yrs hby grted, & to these psnts, & shl be read & construed & have effect in all respts as if the sd lease had constituted a valid demise for the sd term of ——— yrs of the premes hby appted, grted, or demised, & as if the same covts, agrmts, provons, & stipulons had been repeated & contd in these psnts, *Cort by A. & B. agst incumbces*, p. 696, & *for quiet enjoymt*, p. 817. IN WITS, &c.*

Tenant in
tail of age.

Agreement.

Wit-
nesseth.

Demise.
Parcels.

Habendum
to lessee.

Reserva-
tion of
rent.

XXXI.

AGREEMENT SUPPLEMENTAL *to a BUILDING AGREEMENT,*
by which the LESSOR purchases IMPROVED GROUND
RENTS before the leases are granted (a).

AGRMT made the — day of —, betn A., of, &c., Parties.
hinafter called the lessor, of the one pt, & B., of, &c., *builder*,
hinafter called the lessee, of the other pt, supplemental to an
agrmt, dated, &c., made betn the same pties, hinafter reld to
as the bldg agrmt. WHAS it has been agrd that in conson of Recitals.
the immediate paymt by the lessor to the lessee of the sum
of —, the sum of £— p.a. shl be added to the total amt
of the ground rents payable under the sd bldg agrmt in
mner hinafter expd, & that the terms of the same agrmt shl
be orwise varied as hinafter provd; Now it is hby agrd as
follows:—

1. IN CONSON of the sum of £— pd by the lessor to the Agreement
lessee upon the signature of this agrmt (the rect, &c.) the total for pur-
rents to be payable by the lessee or his nominees in respt of chase of
the land, houses, & premes compd in the sd bldg agrmt shl as increased
from the — day of —, be increased by the sum of £— ground
p.a., makg the total aggregate yrly rent so payable (inclusive rents.
of the rents reserved by the leases for the time being actually
grted) as follows (that is to say), from the — day of —, to
the — day of —, the yrly rent or sum of £—, &c., &
from the — day of —, durg the remr of the term of 99 yrs
mentd in the sd bldg agrmt, the yrly rent or sum of £—,
the sd increased rents to be reserved & made payable at the
like times & in like mner as provd by the sd bldg agrmt with
respt to the rents thby made payable.

(a) As to making an agreement supplemental, see p. 2, note. An agree- Stamp.
ment of this kind has hitherto (it is believed) been treated in practice as
requiring only a 6d. agreement stamp; but a question has been raised as to
whether it does not require an *ad val.* conveyance stamp on the sum paid
by the lessor for the purchase of the improved ground rents, either as a
transfer on sale under s. 60 of the Stamp Act, 1891, or as a contract for sale
under s. 59 of the Act; it would seem, however, to be a mere modification
of the original agreement, and if read into that agreement it amounts
merely to a reservation to the lessor out of his own property, so as not to
subject it to any extra stamp duty.

Notice of the agreement should be endorsed on the original agreement.

Mode of
payment.

2. THE INCREASED rents to be payable in respt of the leases remaing to be grted shl be apportioned betn such leases in such mner as shl be approved by the lessor or his surveyor, who shl also (if deemed material) determine what proportion of the rent reserved on each lease, shl be deemed pt of the sd addonal rent of £——.

As to
leasing
part of
land at a
nominal
rent.

3. THE PROVONS of the sd bldg agrmt whby it was provd that when the whole of the ultimate aggregate rent thby reserved shd have been secd, the lessee shd be entled to a lease or leases of the land remaing undemised togr with any house or houses erected thron, at the rent of £——, shl take effect & be applicable when & so soon as the whole of the sd increased ultimate rent of £—— shl have been secd by leases actually grted & not bfe.

Sum paid
to lessee
to be a
charge (a).

[4. THE SD sum of £—— pd by the lessor to the lessee as afsd shl until the sd total ultimate yrly rent of £—— shl have been secd to the lessor by leases actually grted, be deemed to be in the nature of a loan to the lessee, & shl be a charge on the intt of the lessee, under the sd bldg agrmt as hby modified.]

Building
agreement
otherwise
to remain
in force.

5. EXCEPT so far as the same is hby modified, & subjt to the modificons hby made, the sd bldg agrmt shl remain in full force, & shl be treated as incorpd with this agrmt so as to operate in like mner as far as may be as if the sd increased rents had been origlly reserved thby.

Declaration
against
incum-
brances.

6. AND THE lessee hby declares that he has not done or suffered or been party to anything whby his intt under the bldg agrmt is or can be in any way incumbered, or whby he is prevented from enterg into this psnt agrmt, or from givg a good dischg for the sd sum of £——. IN WITS, &c.

(a) Qu.: whether this clause would not make the agreement chargeable with a mortgage stamp.

XXXII.

DEED ALTERING *the* COVENANTS of a MINING LEASE, and giving NEW POWERS to the LESSEE, by endorsement.

PARTIES, A., *lessor*, hereinafter, &c., 1; B., *lessee*, hereinafter, &c., 2. *Mutual Covenants*.

1. THE LESSEE shall forthwith open & commence working the ——— vein on the lands demised by the within-written indenture, & shall continue diligently to work the same. Additional covenant by lessee.

2. Notwithstanding the provisions within contained it shall be lawful for the lessee, so long as he shall diligently work the said ——— vein, to deposit on the said lands all spoil or rubbish which may be dug or raised from or wrought on any part of the said lands, or on or from any other adjoining mines, quarries, or works of the lessee. Additional power to lessee.

3. THE within-written indenture, & the covenants, conditions, & provisions therein contained, shall henceforth operate & have effect as if the covenants, powers, & provisions herein contained had been embodied therein, & shall be altered & modified accordingly, but shall in all other respects remain in force & unaffected by these presents. IN WITNESS, &c. Lease to have effect subject to variations.

XXXIII.

SURRENDER of Term under a LEASE to the REVERSIONER in fee for life or years. VARIATION, where the lease is RENEWABLE under the Lessor's Covenant (b).

PARTIES, A., *termor*, 1; B., *reversioner*, 2. *Recite lease [including covenant for renewal]*, p. 357; & *devolution of term to A.*, p. 359, & of Recitals.

(b) When the surrender is made with a view to the granting of a new lease of the same property to the same lessee, a formal surrender may generally be dispensed with, as the acceptance of a new lease which is inconsistent with the existing lease operates as a surrender by operation of law (*Ive's case*, 5 Rep. 11b; see also notes to *Thursby v. Plant*, 1 Wms. Saunders, 235; p. 277 in edition of 1871; 37 Sol. J. 539); and it has even been held that the grant, with the consent of the lessee, of a new lease to a stranger operates as a surrender (*Davison v. Gent*, 1 H. & N. 744); but the mere oral assent of the old tenant is not sufficient unless he gives up possession at or As to surrender of leases.

Agreement. *revon to B. :* AND WHAS the sd A. has agrd with the sd B. for the surrender to him of the sd premes comprd in the sd recited indre of lease for all the residue now unexpired of the sd term thby grted, in conson of the sum of £—— to be pd by the sd B. to the sd A. : NOW THIS INDRE WITNETH that in
Wit- psuance, &c., *conson, rect,* the sd A., as *benefl owner (a),* doth
nesseth.
Surrender. hby surrender & assn unto the sd B., his hrs & assns [*or, if B. has only a leasehd intt, "his exs, ads, & assns," or, if he have a life este, "& his assns."*] ALL & SINGR the sd hds & premes comprd in or demised by the sd recited indre of lease
Term to To THE intent that the sd term of —— yrs grted by the sd
merge. lease may merge & be absolutely extinguished in the freehd & inhance of, [*or, in the revon of him the sd B. in*] the sd
Release of premes : [AND THIS INDRE ALSO WITNETH, that in
lessor's further psuance of the sd agrmt, & for the conson afsd, the sd
covenant A. doth hby rele & dischge the sd B., his hrs, exs, ads, &
to renew. assns, from the hinhfe recited covt in & by the sd indre of lease made & entd into as afsd for the renewal of the sd lease, & from all actions, pcdgs, claims, & demands under the sd covt, or any other covt or provon in the sd indre of lease contd.] IN WITS, &c.

about the time of the grant of the new lease (*Wallis v. Hands*, [1893] 2 Ch. 75); see further 37 Sol. J. 539. As to the power of limited owners to accept surrenders and grant new leases, see the Settled Estates Act, 1877, s. 7; and the Settled Land Act, 1882, s. 13; see also s. 31 (iv.); and see the Conv. Act, 1881, s. 42 (2), enabling trustees to accept surrenders on behalf of infant reversioners. As to the surrender of leases vested in infants or femmes covert, see 11 Geo. IV. & 1 Wm. IV. c. 65, ss. 12, 14; *Re Griffiths*, 29 Ch. D. 248. The rent should be paid up to the surrender; under the old law, if the lease contained a covenant to pay, the action for rent accrued due before the surrender was not affected (*A.-G. v. Cox*, 3 H. L. 240), but rent not actually accrued due was lost (*Grimman v. Legge*, 8 B. & C. 324), but this is altered by the Apportionment Act, 1870, if *Swansea Bank v. Thomas*, 4 Ex. D. 94, is good law; and see *Re South Kensington Co-operative Stores*, 17 Ch. D. 161.

The surrender of a lease does not affect the rights of under-lessees, whether it is made with a view to a renewal (4 Geo. II., c. 28, s. 6), or otherwise (8 & 9 Vict. c. 106); and although the lease was liable to forfeiture, and if the lessor had re-entered for the forfeiture their rights would have been gone (*G. W. Railway v. Smith*, 2 Ch. D. 235).

Recitals in a surrender of a lease would often be unnecessary, and it may generally be conveniently made by endorsement.

(a) This implies full covenants for title, see p. 398, note. If A. is a trustee or mortgagee he will surrender "*as trustee*" or "*mortgagee*," which will imply a covenant against incumbrances, see *ib.*

XXXIV.

SURRENDER of a PORTION of the land (b) comprised in a FARMING LEASE to a MORTGAGEE in fee, and ABATEMENT of RENT in respect thereof (by endorsement on the lease).

PARTIES, A., *lessee*, 1; B., *mtgor*, 2; C., *mtgee*, 3; *WHAS* Parties.
the sd A. has, at the reqt of the sd B., agrd to surrender to Recital of
the sd C., as mtgee of & the pson legally seised of the fee agreement.
simple & inhance of the premes demised by the within written
indre in revon expectant on the term thby grted, such portions
of the land & premes thrin comprd as are hinafter descd &
surrendered, upon being pd the sum of £—— wch the sd A.
has agrd to accept in full satisfon of all claims whatsr wch as
an outgoing tenant accdg to any of the provons contd in the
sd lease or by the custom of the country, or the Agricultural
Holdings (England) Act, 1883, or orwise the sd A. has or
could have or claim in respt of the sd premes hby surrendered,
AND it has also been agrd that the rent of £—— p.a. reserved
by the within written indre shl be abated as hinafter expd.
NOW THIS INDRE WITNETH, that in psuance of the sd Wit-
agrmnt & in conson of the sum of £——, now pd by the sd B. nesseth.
to the sd A., the rect, &c., & of the abatemt hinafter made in
the sd rent, the sd A., as benefl owner, at the reqt of the sd B.,
doth hby surrender & assn unto the sd C., his hrs & assns, all Surrender.
those pces of land, &c., formg pt of the lands & premes comprd
in & demised by the within written indre, To THE intent that Term to
the residue now unexpired of the term of —— yrs thby grted merge.
may merge & be extinguished in the freehd & inhance of the
sd premes hby surrendered, & that the same premes may be
dischgd from all the provons of the within written indre.
AND it is hby agrd & decld that in conson of the surrender Provision
hinbfe contd, & of the premes, the sd yrly rent of £—— for abate-
reserved by the within written indre shl as from the —— day ment of
of ——, be abated or reduced by the sum of £—— p.a. (being rent.

(b) As to the effect of a surrender of part of the premises in a lease, see the Conv. Act, 1881, s. 12; and *Baynton v. Morgan*, 22 Q. B. D. 74, above, p. 53, note.

Covenants,
&c., of
lease to
remain in
force as to
remaining
premises.

at the rate of £—— per acre for the sd premes hby surrendered), & that accdly as from that date the yrly rent of £—— shl be payable in respt of the pces of land & premes remaing subjt to the within written indre at the like times & in like mner as the sd yrly rent of £—— is thby made payable; AND it is hby further agrd & decld that as from the sd —— day of ——, all the covts on the pt of the lessee, & the power or condon of re-entry, & the covts on the pt of the lessor, & all other powers, condons, & provons in the within written indre, shl remain in force with respt to the sd pces of land & premes remaing subjt to such indre as far as the same covts, powers, condons, & provons resp'y may be applicable thto, with such modifcons as may be rendered necy by such redon or abatemt of the sd rent as afsd, & the other circes of the case. IN WITS, &c.

XXXV.

SURRENDER *by endorsement of lease where the REVERSION is in SETTLEMENT and subject as to different PARTS to various MORTGAGES.*

Recitals.

Wit-
nesseth.

Surrender.

Term to
merge.

PARTIES, lessees, 1; sevl sets of mtges, 2, 3, & 4; tenant for life of equity of redmon, 5. Recitals shou'g shortly state of title to revon. AND WHAS it has been agrd that with a view to the grtg of a new lease of pt of the premes comprd in the within written indre the lessees shl make & exte such surrender as is hinafter contd. NOW THIS INDRE WITNETH that in psuance, &c., & in conson of the premes & of the determinon hby made of the covts by the lessees in the within written indre contd, the lessees as benefl owners do resp'y hby surrender & yield up to the sevl other pties hto accdg to their respive estes & intts in revon as hinbfe mentd, ALL & SINCE the freehd, copyhd, & leasehd hds & premes comprd in & demised by the within written indre or now held by the lessees thrunder, subjt to the sub-tenancies created by the lessees, To THE intent that the residue now unexpired of the term of yrs subsistg under or by virtue of the within written indre in the sd respive premes hby surrendered, may merge & be extin-

guished in the revon immedly expectant on the same term of yrs of & in the same premes resp'y, & that the within written indre & all the covts & provons thrin contd may be hby determined. In wrrs, &c.

XXXVI.

SURRENDER by LESSEE and his MORTGAGEES by endorsement on the Lease, with a view to the granting of a **NEW LEASE** of PART of the land (a).

PARTIES, A., *lessee*, 1 ; B., C., & D., *mtgees*, 2 ; E., *lessor*, Parties.
 8 : **WHAS** since the date of the within written indre of lease Recitals as
 certn bldgs, fences, & other erons have been built & set up on to altera-
 the sd pce of ground thby demised & other alterons & addons tions in
 have been made by the sd A. in & to the sd premes, NOW premises.
THIS INDRE WITNETH, that in conson of a new lease intd Wit-
 to be grted of a pt of the sd premes as hinafter mentd, the sd nesseth.
 B., C., & D., as *mtgees*, at the reqt of the sd A. do hby sur- Surrender.
 render & assn, & the sd A., as *benefl owner*, doth hby surrender,
 assn, & confirm unto the sd E., his hrs & assns, all the sd pce
 of ground & other the premes mentd & comprd in the within
 written indre, togr with all the blds, erons, & addons since
 erected or set up thron or added thto, To **THE** intent that the
 term of — yrs grted by the sd indre of lease may be merged
 & extinguished in the freehd & inhance of the sd premes, & to
 the further intent that a new lease may be grted by the sd E. New lease
 to the sd A. of a pt of the sd pce of ground & premes with the to be
 bldgs & erons thron. **IN WITS, &c.** granted.

(a) As to surrenders of renewable leases, see 4 Geo. II. c. 28, s. 6.

LICENSES (a).

I.

LICENSE *not under seal by Lessors to LESSEE to ASSIGN, UNDERLET, or MORTGAGE (b).*

WE, the undersigned, being the psnt landlords of the ppty hinafter mentd, do hby consent to an assnmt *or*, “underlease,” [by way of mtge] by A., of, &c., the psnt tenant of the sd ppty under the lease hinafter mentd, to B., of, &c., [for the term of — yrs from —, *or*, “for the whole remaing term except the last day thof,”] of, [*pcels shortly descd*, being pt of], the hds & ppty comprd in an indre of lease dated, &c., & made betn, &c., & thby demised to K., for the term of — yrs, from —, PROVd that this consent shl not authorise any further or other assnmt, [*or*, “underlettg or partg wholly or partially with the posson of”] the sd premes or any pt thof, or prejudice or affect any of the covts, condons, or provons in the sd lease contd, except to the extent hinfie expd. As wits our hands this — day of —.

Signed by the Lessors.

WITS,

(a) See also AGREEMENTS, and LEASES (Mining). A license, if under seal, is subject to a deed stamp of 10s.; but if under hand only is exempt, unless amounting to an agreement.

Effect of
license to
lessee.

(b) A license does not affect the lessor's right as to future breaches of covenant or destroy the power of re-entry, see 22 & 23 Vict. c. 35, ss. 1, 2; 23 & 24 Vict. c. 38, s. 6; a defeasance for reviving the condition of re-entry is therefore unnecessary, Elph. Introd., p. 237. A license to underlet does not, unless so provided, preclude the underlessee from underletting (*Williamson v. Williamson*, 9 Ch. 729). As to licenses to assign or underlet, see 5 Dav. Prec., pt. 1, p. 193, note. By the Conv. Act, 1892, 55 & 56 Vict. c. 13, s. 3, no fine is to be exacted from the lessee for a license to assign, &c., unless otherwise provided by the lease.

II.

LICENSE *under Seal by Lessors to LESSEE to make ALTERATIONS in BUILDINGS (c).*

THIS INDRE, &c., *pties*; A., B., & C., *lessors* (hinafter called the landlords), 1; D., *lessee* (hinafter called the lessee), 2. *Recite lease to K.*, & in the sd lease is contd a covt on the pt of the sd K., not to erect any bldg nor increase the height of any eron, or bldg in the yard or garden of the sd demised premes, nor cut, injure, or alter any of the ppal walls or timbers of, nor make any alteron in the thby demised premes witht having first obtd the license & consent in writg of the lessors. AND WHAS the sd premes have become legally vested in the lessee for the remr of the sd term of 21 yrs, subjt to the rent & covts of the sd lease: AND WHAS the revon in fee of the sd premes expectant on the determinon of the sd term is now vested in the landlords: AND WHAS the lessee is desirous of opening a doorway in the pty wall at the rear of the sd premes demised by the sd lease, & of formg a communicon betn the same & the adjoining messe now in his occupon, & of makg & executing certn other works & alterons in the sd demised premes accdg to a plan & specificon prepared by him, & he has accdly applied to & reqted the landlords to grt him their license for those pposes, & such applicon & the sd plan & specificon having been submitted to their surveyor & approved by him, the landlords have agrd to grt such license subjt as hinafter mentd, & the lessee in conson thof has agrd to enter into the covts hinafter contd: NOW THIS INDRE WITNETH, that in conson of the premes & of the covts hinafter contd on the pt of the lessee, the landlords do hby give & grt unto the lessee, his exs, ads, & assns, their full license & permission to make the sd doorway in & through the pty wall of the sd demised premes, & to form a communicon betn the same & the sd messe now in the occupon of the lessee, & also to make & exte the other works & alterons hinfte refd to, & wch are parlarly delineated & descd in the sd plan & specificon, provd the same be done within the period of three calr months from

Recitals.

Lease containing covenant not to alter buildings.

Present owners of lease, and reversion.

Application by lessee for license to make alterations in buildings.

Witnesseth.

Grant of license to make specified alterations.

Covenants
by lessee.
To make
specified
alterations
within a
certain
time.

To obtain
sanction of
insurance
office to
alterations.

Covenants
of lease to
apply to
the build-
ings as
altered.

To restore
party-wall
to original
state.

the date hrof, & under the superintendce & to the satisfon of the surveyor for the time being of the landlords, their hrs or assns: AND THIS INDRE ALSO WITNETH that in conson of the license hinfce given, the lessee doth hby covt with the landlords, their hrs & assns, THAT he, the lessee, his exs, ads, or assns will, within the sd period of three calr months from the date hrof, make the sd doorway & communicon, & exte the other works & alterons afcd in a good & substantial mner with pper materials under the superintendce & to the satisfon of the surveyor for the time being of the landlords, their hrs or assns, AND WILL bfe makg such alterons, communicate the parlars thof to the directors of the — Insee Co, in wch office the sd demised premes are insured agst fire, & obtain the consent of the sd directors to the sd alterons, AND THAT when such doorway & communicon & other works & alterons shl have been completed, all the restrictive & other covts on the pt of the sd K., & provons contd in the sd indre of lease, shl be applicable to the sd thby demised premes in their then altered state in the same mner & as fully & extensively as if such premes had continued in the same state as the same are at psnt, AND THAT the lessee, his exs, ads, or assns will, at the end or other sooner determinon of the hinfce recited lease or whenever thrunto required by the landlords, their hrs or assns, at the costs of him the lessee, his exs, ads, or assns, well & substantially brick up the opening made in the sd pty wall & restore the same in such mner as the surveyor for the time being of the landlords, their hrs or assns, shl direct, & to his or their complete satisfon. In WITS, &c.

III.

LICENSE, *under seal*, by lessor to LESSEE to CONTINUE
Alterations made in Buildings in BREACH of the
Covenants of the Lease (a).

THIS INDRE, &c., *pties*, A., *lessor*, hinafter called the
Recitals. landlord, 1; B., *lessee*, hinafter called the tenant, 2: *Recite*

As to

(a) See note to Precedent I. Probably this need not be under seal. By

lease to K., & that lease is vested in B., & reversion in A., as in last form: AND WHAS the tenant has recently made alterations in the sd premises, *specify nature of alterations*: AND WHAS the alterations so made by the tenant in the sd premises, are considered to be wholly or to some extent an infringement of, or unauthorised by the covenants & provisions in the sd indenture of lease contained: AND WHAS the landlord has agreed in consonance of the payment to him by the tenant of the sum of £——, to waive his rights in respect of any breach of the covenants of the sd lease so committed by the tenant, & to grant to him such license to continue such alterations, & otherwise, as is hereinafter contained, subject as hereinafter mentioned: NOW THIS INDENTURE WITNESSETH that in pursuance of the sd agreement & in consonance of the sum of £—— now paid by the tenant to the landlord, *recte*, the landlord doth hereby (so far as he is affected by or concerned in the same) give & grant unto the tenant, his executors, administrators, & assigns, full liberty & license to continue & maintain during the residue of the sd term of —— years the several alterations made by him in the sd demised premises as hereinafter mentioned: AND DOETH hereby waive & release all claim to damage or right of re-entry upon the sd demised premises, & other rights which may have accrued to him, the landlord, by reason of any breach of any of the covenants or conditions of the sd lease committed by the tenant in respect of any of the alterations or matters hereinafter mentioned. PROVIDED always & it is hereby agreed & decided, that the license & waiver hereinafter contained shall extend only to the specific alterations & matters hereinafter expressly mentioned, & shall not be deemed to authorise any further or other alterations in the sd premises, or to operate as a waiver or release of the covenants or conditions of the sd lease further or otherwise, AND THAT the sd lease & the covenants on the part of the lessee therein contained for keeping the sd premises in repair & restrictive of the right to make alterations therein, & all other the covenants & conditions therein contained, shall henceforth be construed & operate & take effect in all respects in like manner as if the alterations aforesaid had been made in the sd demised premises previously to the date of the sd lease. IN WITNESS, &c.

Lease.

That lessee has made alterations in breach of covenants.

Agreement by lessor to grant license for alterations.

Witnesseth.

Lessor grants license,

and waives damages and re-entry in respect of alterations.

Proviso that license shall apply only to specific alterations.

That lease shall extend to alterations.

the Conv. Act, 1892, 55 & 56 Vict. c. 13, s. 2 (1), the waiver of the right of re-entry for breach of covenant is not to affect the lessor's right to recover expenses incurred in reference to the breach.

waiver of right of re-entry.

IV.

LICENSE *by tenant for LIFE (a) to LESSEE to keep a public-house in CONSIDERATION of lessee being RESTRICTED from ASSIGNING, &c., without license, and DEFEASANCE extending CONDITION of re-entry (ENDORSED on the lease and counterpart).*

Parties.	<i>PARTIES, A., equitable tenant for life, hereafter called the landlord, wch expression shl be deemed to include his succors in title where the context so admits, 1; B., hereafter called the lessee, wch expression shl be deemed to include his exs, ads, & assns, where the context so admits, 2. C. & D.,</i>
Recitals. Title to reversion.	<i>trees, 3. WHAS the revon of the premes comprd in & demised by the within-written indre expectant on the term thby grted is now vested in the landlord as equitable tenant for life under the will of, &c., & the legal este in the same revon</i>
Agreement.	<i>is now vested in the sd C. & D. as trees of the sd will. AND WHAS the lessee has applied to the landlord for his license to him, the lessee, to carry on the business of a licensed victualler or publican on the sd demised premes, wch license the landlord has agrd to give to him for a term of — yrs as hereafter mentd on condon that the lessee shl henceforth be restricted from assng or underlettg the sd demised premes witht license in manner hereafter expd: NOW THIS INDRE WITNETH that in conson of the covt & grt on the pt of the lessee & provons hereafter contd, & of the premes, the landlord doth hby give & grt unto the lessee full license & permission to use the premes comprd in & demised by the within-written indre for the pposes of the business of a licensed victualler or publican for a term of — yrs from the date of these psnts, but so that the sd demised premes shl not after the expiron of such term be used for any such ppose witht a further license for that ppose & so that in the event of any breach by the lessee of</i>
Wit- nesseth.	
License.	

Power of
tenant for
life to give
license or
waive
forfeiture.

(a) Although there is a remarkable absence of authority or dicta on the subject in the books, the power of a tenant for life or of trustees or other limited owners to grant a license to do any act for which it is required by the lease, or to waive a forfeiture for breach of covenant by accepting rent or otherwise, cannot be questioned, such a power being a necessary incident of ordinary management.

the covt agst assning or underlettg witht license hinafter contd, the license hinfte contd shl thrupon cease & be forfeited : AND THIS INDRE ALSO WITNETH that in conson of the license hinfte contd & of the premes the lessee doth hby covt with the landlord & also as a septe covt with C. & D., the psnt trees of the sd will, their hrs & assns, that the lessee shl not at any time hrafter make any assnmt or underlease or pt with the posson of the sd demised premes or any pt thof witht the license or consent in writg of the landlord first had & obtd, & doth hby further covt with & grt unto the landlord & also septely with & to the sd trees, their hrs & assns, that the provo or condon of re-entry by the within-written indre given or reserved to the landlord in the event of the rent thby reserved being in arrear as thby mentd or in the event of any breach of any of the covts on the pt of the lessee thrin contd shl henceforth be enlarged & extended so as to operate & be exerciseable henceforth in the same or the like mner as if the covt on the pt of the lessee hinfte contd agst assning or underlettg witht license as afsd had been contd in the within-written indre to the intent that such provo or condon of re-entry shl apply to the event of the breach of such last-mentd covt as well as the other events afsd, & to the intent that the within-written indre & the demise thby made shl henceforth be defeasible accdly, Provd always that nothing hrin contd shl in anywise prejudice or affect the sd provo or condon of re-entry except by way of enlargemt or extension thof as afsd, AND the lessee doth hby further covt with the landlord & also with the sd trees that he the lessee hath not at any time done or been pty or privy to anything whby the sd demised premes or his intt thrin, are, is, or may be, in any mner incumbered or affected or whby he is prevented from enterg into or makg such covt, grt, or defeasce as is hinfte contd, AND the landlord doth hby covt with the lessee that he, paying the rent reserved by the within-written indre & performing & observg the covts & agrmts thrin & hrin contd, may, &c., *for quiet enjoyment*, p. 695. IN WITS, &c.

Covenant
not to
assign, &c.

Defeasance.

Proviso.

Covenant
against
incum-
brances.

V.

LICENSE *by tenant for LIFE to OWNER in fee of adjoining land to BUILD on and USE a plot of ground contrary to RESTRICTIVE COVENANTS (a).*

Parties.	<i>PARTIES, A., tenant for life, 1; B., owner in fee of adjoining</i>
Recitals.	<i>land, 2. Recite convce by X., A.'s predecessor in title to Y., B.'s predecessor in title, of land subjt to restrictive covts, settg out those wch are to be modified: AND WHAS the sd A. is now, under the will of the sd X., tenant for life in posson of the este, late of the sd X., adjoining the land comprd in the sd convce to the sd Y.: AND WHAS by an indre, &c., the land comprd in the sd convce to the sd Y., was conveyed to & is now vested in the sd B. in fee simple: AND WHAS the sd B. has reqtd the sd A. to permit the eron & maintce of bldgs, &c., &c., upon the plot of ground hinafter mentd formg pt of the last-mentd land, & the user of such plot & the bldgs thron as & fcr, &c., AND WHAS the sd A. has consented to grt such license on the condons & subjt to the restrons hinafter contd: NOW THIS INDRE WITNETH that in conson of the agrmt on the pt of the sd B. hinafter contd, the sd A. as such tenant for life as afsd (but not so as to imply any covt or warranty except as to his own acts) doth hby grt unto the sd B., his hrs & assns, FULL license & permission to erect & for ever hrafter to maintain & continue upon the plot of ground situate, &c., containg, &c., delineated & edged red upon the plan drawn in the margin of these psnts, a messe & bldgs, &c., &c. And also full license & permission for ever hrafter to use the sd plot of ground & the messe & bldgs to be erected thron as afsd as & for, &c., premes not to be used so as to cause nuisance, &c. (b), see p. 292, but for no other ppose whatsr, Upon condon nevs, &c., &c.,</i>
Title of parties.	
Agreement.	
Witnesseth.	
License.	

As to
release of
restrictive
covenants.

(a) As to restrictive covenants, see p. 285, note; and as to the power to release or waive such covenants, see p. 286, note. In case of a doubt as to whether a tenant for life has power so to do, so as to bind the remainderman, words excluding any possible implication of a covenant or warranty are inserted. This precedent takes the form of a license instead of a release, as it is subject to conditions. As to who can give a license in the case of a building estate, see *Everett v. Remington*, [1892] 3 Ch. 148.

(b) See *White v. Jameson*, 18 Eq. 303.

PROVD ALWAYS, &c., that except so far as the same is hby *Proviso.*
varied the sd indre of convce of, &c., & the restrictive covts
& provons thrin contd shl remain in full force & effect. In
wits, &c.

VI.

LICENSE *by LORD of MANOR to Copyholder to make a*
DEMISE for twenty-one years.

Manor of —, in the }
Coy of —. } To B., of, &c., *copyholder.*

I, A., of, &c., lord of the manor of —, in the coy of —,
do hby give you license to demise [—, being pt of] the
copyhd messe, farm, & hds, known as —, situate at, &c., to
wch you were admitted tenant at the will of the lord, accdg to
the custom of the sd manor, out of Ct on the — day of —,
to K., of, &c., his exs, ads, & assns, for a term of 21 yrs
to be computed from —. As wits my hand this — day
of —.

VII.

LICENSE *by Trustees of a strict SETTLEMENT of a MANOR*
to Copyholder to DEMISE for Ninety-nine years, with
PROVISO Fixing the Annual SUM upon which the FINES
are to be Assessed during the term (b).

Manor of —, in the } WE, A., of, &c., & B., of, &c.,
Coy of —. } the trees of the manor of —,
in the coy of —, do hby by virtue of a power vested in us by
an indre dated, &c., & of every or any other power in this
behalf us enablg, grt license to C. of, &c., one of the copyhd
tenants of the sd manor, to demise the copyhd tenemt known

(b) Under the Settled Land Act, 1882, s. 14, a tenant for life or other
limited owner (see s. 58) may now grant such a license as this, which must
be entered on the Court rolls (s. 14 (3)); and see also the Settled Estates
Act, 1977, s. 9.

Power of
tenants for
life to
grant
licenses to
copy-
holders.

as —, to wch he the sd C. was admitted tenant at the will of the lord accdg to the custom of the sd manor at a Ct holden on the — day of —, to K., of, &c., his exors, ads, & assns, for bldg pposes for the term of ninety-nine yrs from the — day of — next so that during the same term the sum of £— shl be considered as the annl value for assessg the fines payable to the lord of the manor upon the admission of any new tenant to the sd tenemt, AND so that this license shl be entered on the Ct Rolls of the sd manor within six calr months from the date hrof orwise the same shl be void reservg nevs unto the lord all fines, heriots, rents, customs, & services due & to grow due in respt of the sd tenemt. As wits our hands this — day of —.

NOTE ON ESTATE DUTY ON REVERSIONARY INTERESTS.

First.—Take the case of a legacy, or share of residue given to A. for life with remainder to B. absolutely.

If the testator died before the 2nd August, 1894, probate duty will have been paid in respect of his personal estate situate in the United Kingdom at the time of his death, or on the high seas at that time and first reduced into possession in the United Kingdom, *Att.-Gen. v. Pratt*, L. R. 9 Ex. 140; it follows that if the legacy is wholly payable out of property of this nature no estate duty will be payable in respect of it on the death of A. (Finance Act, 1894, s. 21). But if the whole or any part of the legacy is payable out of the proceeds (whether arising by sale or mortgage) of freehold or copyhold land devised by the testator or out of foreign assets the case is different, no probate duty will have been paid in respect of it on the death of the testator, and therefore estate duty will be payable, in respect of the whole or part, as the case may be, of the legacy on the death of A. As the proceeds of land do not pass to the executors as such, the estate duty on such part of the legacy as arises in this manner will be a charge on the legacy, s. 9 (1). Foreign assets appear not to pass to the executor as such within the meaning of the Act; for an executor includes an administrator, see s. 22 (1) (d), and an administrator is a mere officer of the Court, so that foreign assets do not pass to him as such, and it appears impossible to suppose that the question whether estate duty in respect of foreign assets is to be a charge on them or not is to depend upon whether the deceased died intestate or testate, therefore the better opinion appears to be that the estate duty payable in respect of foreign assets is a charge on them. No settlement estate duty can be payable (Finance Act, s. 21 (4)).

Second.—If the testator died after the 1st August, 1894. Here estate duty is payable on all his estate, possibly settlement estate duty may be payable in respect of the legacy. Any part of the legacy which arises from the sale or mortgage of freeholds or copyholds devised by the testator or from foreign assets will be charged with estate duty, and if settlement estate duty is payable it will be a charge on the legacy if the estate duty is a charge, but not otherwise, *Re Webber*, W. N. 1896, 38; [1896] 1 Ch. 914.

Third.—Next take the case of personalty settled before the 2nd August, 1894, in trust for A. for life, remainder to B. for life, remainder to C. absolutely. Let A. die before 2nd August, 1894, estate duty will be payable on the death of B., unless account duty was payable on A.'s death, in which case the property in respect of which the account duty was paid is exempt, Finance Act, 1894, s. 21 (1). This exemption may for some time to come be occasionally a matter of some importance. If A. dies after the 1st August, 1894, the result will be the same as in the following case, except where A. and B. are husband and wife and A. takes the 1st life interest in property settled by B., in which case duty is not payable on the property so settled till the death of B. (Finance Act, 1894, s. 21 (5)), and that settlement estate duty cannot be payable.

Fourth.—Where personalty is settled after the 1st August, 1894, estate duty and possibly settlement estate duty will be payable on the death of A., and no such duties will be payable on the death of B.

In both the third and fourth cases the estate duty (and settlement estate duty if any) will be a charge on the corpus.

Fifth.—The intricacies of strict settlements are such that it is impossible to give more than a very simple example. Suppose that the property is settled on A. for life with remainder to his eldest son B. for life with remainder on B.'s eldest son C. in fee. Subject to jointures to the wives of A. and B. and to charges for portions for their younger children. On A.'s death estate duty becomes payable, a proportionate part being charged on his widow's jointure and the portions for his younger children. Settlement estate duty is also payable on the jointure of A.'s wife; and on the value of the property after deducting the portions and jointure. No further estate duty will be payable on B.'s death.

A purchaser of a reversion must in all cases consider whether any estate duty has become payable at the date of his purchase. If this is the case he must not be satisfied with a receipt for it, he must require the production of a certificate of discharge under Finance Act, 1894, s. 11, which by suba. (4) exonerates a purchaser for value without notice. If duty will be payable on the falling in of the reversion, it must be remembered that it is impossible to know at what rate the duty will be charged, as the property has to be aggregated with the other property passing on the death of the deceased except in the case mentioned in the Finance Act, s. 4.

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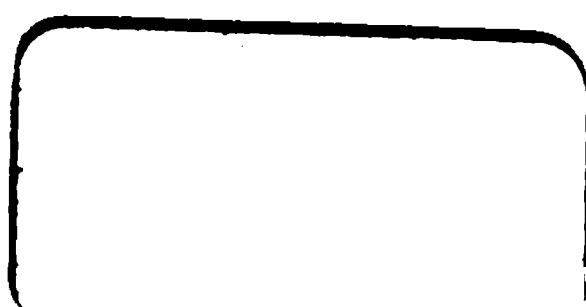
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